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102D CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 102-381
1st Session Part 1

TECHNICAL CORRECTIONS ACT OF 1991

NOVEMBER 25, 1991.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 1555 which on March 21, 1991, was referred jointly to the Committee on Ways and Means and the Committee on Energy and Commerce]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1555) to make technical corrections relating to the Revenue Reconciliation Act of 1990, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Technical Corrections Act of 1991".

TITLE I—REVENUE PROVISIONS

SEC. 101. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 102. AMENDMENTS RELATED TO REVENUE RECONCILIATION ACT OF 1990.

(a) AMENDMENTS RELATED TO SUBTITLE A.—

(1) Subparagraph (B) of section 59(j)(3) is amended by striking "section 1(i)(3)(B)" and inserting "section 1(g)(3)(B)".

(2) Paragraph (2) of section 897(a) is amended by striking "21" in the heading of such paragraph and in subparagraph (A) and inserting "24".

(3) Clause (ii) of section 32(b)(1)(B) is amended by inserting a comma after "greater".

(4) Section 541 is amended by striking "28 percent" and inserting "31 percent".

(5) Subsection (c) of section 32 is amended by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF DEDUCTION FOR MEDICAL INSURANCE OF SELF-EMPLOYED.—In determining the amount of adjusted gross income for purposes of this section, the amount of the deduction under section 162(l) shall be determined without regard to section 162(l)(3)(B)."

(6) Clause (i) of section 151(d)(3)(C) is amended by striking "joint of a return" and inserting "joint return".

(7) Subparagraph (B) of section 402(e)(1) is amended by striking the last sentence thereof.

(8) Subsection (b) of section 1 is amended by striking "$26,500" in the table contained therein and inserting "$26,050".

(b) AMENDMENTS RELATED TO SUBTITLE B.—

(1) Paragraph (1) of section 11212(e) of the Revenue Reconciliation Act of 1990 is amended by striking "Paragraph (1) of section 6724(d)" and inserting "Subparagraph (B) of section 6724(d)(1)".

(2) Subsection (b) of section 4082 is amended to read as follows:

"(b) TAX ON CERTAIN USES.—If any person uses gasoline (other than in the production of gasoline or special fuels referred to in section 4041), such use shall for purposes of this chapter be considered a removal."

(3)(A) Subparagraph (B) of section 4093(c)(2) is amended by inserting before the period "unless such fuel is sold for exclusive use by a State or any political subdivision thereof".

(B) Paragraph (4) of section 6427(l) is amended by inserting before the period "unless such fuel was used by a State or any political subdivision thereof".

(4) Paragraph (1) of section 6416(b) is amended by striking "chapter 32 or by section 4051" and inserting "chapter 31 or 32".

(5) Paragraph (1) of section 9502(e) is amended to read as follows:

"(1) INCREASES IN TAX REVENUES BEFORE 1993 TO REMAIN IN GENERAL FUND.—In the case of taxes imposed before January 1, 1993, the amounts required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be determined without regard to any increase in a rate of tax enacted by the Revenue Reconciliation Act of 1990."

(6) Section 7012 is amended—

(A) by striking "production or importation of gasoline" in paragraph (3) and inserting "taxes on gasoline and diesel fuel", and

(B) by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(7) Subsection (c) of section 5041 is amended by striking paragraph (6) and by inserting the following new paragraphs:

"(6) CREDIT FOR TRANSFEREE IN BOND.—If—

"(A) wine produced by any person would be eligible for any credit under paragraph (1) if removed by such person during the calendar year,

"(B) wine produced by such person is removed during such calendar year by any other person (hereafter in this paragraph referred to as the 'transferee') to whom such wine was transferred in bond and who is liable for the tax imposed by this section with respect to such wine, and

"(C) such producer holds title to such wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph,

then, the transferee (and not the producer) shall be allowed the credit under paragraph (1) which would be allowed to the producer if the wine removed by the transferee had been removed by the producer on that date.

"(7) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

"(A) to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons during a calendar year, and

"(B) to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year."

(8) Paragraph (3) of section 5061(b) is amended to read as follows:

"(3) section 5041(f),".

(9) Section 5354 is amended by inserting "(taking into account the appropriate amount of credit with respect to such wine under section 5041(c))" after "any one time".

(10) Effective on the date of the enactment of this Act, paragraph (7) of section 11202(i) of the Revenue Reconciliation Act of 1991 is amended by adding at the end thereof the following: "The Secretary may treat any person who bore the ultimate burden of the tax imposed by this subsection as the person to whom a credit or refund under such provisions may be allowed or made."

(c) AMENDMENTS RELATED TO SUBTITLE C.—

(1) Paragraph (4) of section 56(g) is amended by redesignating subparagraph (I) as subparagraph (H).

(2) Subparagraph (B) of section 6724(d)(1) is amended—

(A) by striking "or" at the end of clause (xi),

(B) by striking the period at the end of the clause added by section 11212(e) of the Revenue Reconciliation Act of 1990 and inserting ", or", and

(C) by redesignating the clause added by section 11323(c)(2) of such Act as clause (xiii).

(3) Subsection (g) of section 6302 is amended by inserting ", 22," after "chapters 21".

(4) The earnings and profits of any insurance company to which section 11305(c)(3) of the Revenue Reconciliation Act of 1990 applies shall be determined without regard to any deduction allowed under such section; except that, for purposes of applying sections 56, 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, such deduction shall be taken into account.

(5) Subparagraph (D) of section 6038A(e)(4) is amended—

(A) by striking "any transaction to which the summons relates" and inserting "any affected taxable year", and

(B) by adding at the end thereof the following new sentence: "For purposes of this subparagraph, the term 'affected taxable year' means any taxable year if the determination of the amount of tax imposed for such taxable year is affected by the treatment of the transaction to which the summons relates."

(6) Subparagraph (A) of section 6621(c)(2) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall be applied without regard to any such letter or notice which is withdrawn by the Secretary."

(7) Clause (i) of section 6621(c)(2)(B) is amended by striking "this subtitle" and inserting "this title".

(d) AMENDMENTS RELATED TO SUBTITLE D.—

(1) Paragraph (9) of section 132(h) is amended by striking "or the last sentence of subsection (c)(1) thereof".

(2) Notwithstanding section 11402(c) of the Revenue Reconciliation Act of 1990, the amendment made by section 11402(b)(1) of such Act shall apply to taxable years ending after December 31, 1989.

(3) Clause (ii) of section 143(m)(4)(C) is amended—

(A) by striking "any month of the 10-year period" and inserting "any year of the 4-year period",

(B) by striking "succeeding months" and inserting "succeeding years", and

(C) by striking "over the remainder of such period (or, if lesser, 5 years)" and inserting "to zero over the succeeding 5 years".

(e) Amendments Related to Subtitle E.—

(1) Subsection (d) of section 39 is amended—

(A) by redesignating the paragraph added by section 11511(b)(2) of the Revenue Reconciliation Act of 1990 as paragraph (1), and

(B) by redesignating the paragraph added by section 11611(b)(2) of such Act as paragraph (2).

(2)(A) Subsection (h) of section 56 is amended—

(i) by striking "subsection (g)(4)(G)" in paragraph (5) and inserting "subsection (g)(4)(F)", and

(ii) by striking "section 613(e)(3)" in paragraph (7)(B) and inserting "section 613(e)(2)".

(B) Clause (ii) of section 56(d)(1)(B) is amended to read as follows:

"(ii) appropriate adjustments in the application of section 172(b)(2) shall be made to take into account the limitation of subparagraph (A)."

(C) Subparagraph (B) of section 56(g)(1) is amended by striking "and the alternative tax net operating loss deduction" and inserting ", the alternative tax net operating loss deduction, and the deduction under subsection (h)".

(3) Clause (i) of section 613A(c)(3)(A) is amended by striking "the table contained in".

(4) Section 6501 is amended—

(A) by striking subsection (m) (relating to deficiency attributable to election under section 44B) and by redesignating subsections (n) and (o) as subsections (m) and (n), respectively, and

(B) by striking "section 40(f) or 51(j)" in subsection (m) (as redesignated by subparagraph (A)) and inserting "section 40(f), 43, or 51(j)".

(5) Paragraph (2) of section 55(c) is amended by striking "29(b)(5)" and inserting "29(b)(6)".

(6) Subparagraph (C) of section 38(c)(2) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) is amended by inserting before the period at the end of the first sentence the following: "and without regard to the deduction under section 56(h)".

(7) Clauses (iii) and (iv) of section 53(d)(1)(B) are each amended by striking "section 29(b)(5)(B)" and inserting "section 29(b)(6)(B)".

(8) Subparagraph (B) of section 56(h)(4) is amended by striking "For purposes of subparagraph (A), the" and inserting "The".

(f) Amendments Related to Subtitle F.—

(1)(A) Section 2701(a)(3) is amended by adding at the end thereof the following new subparagraph:

"(C) Valuation of qualified payments where no liquidation, etc. rights.—In the case of an applicable retained interest which is described in subparagraph (B)(i) but not subparagraph (B)(ii), the value of the distribution right shall be determined without regard to this section."

(B) Section 2701(a)(3)(B) is amended by inserting "CERTAIN" before "QUALIFIED" in the heading thereof.

(C) Sections 2701(d)(1) and (d)(4) are each amended by striking "subsection (a)(3)(B)" and inserting "subsection (a)(3)(B) or (C)".

(2) Clause (i) of section 2701(a)(4)(B) is amended by inserting "(or, to the extent provided in regulations, the rights as to either income or capital)" after "income and capital".

(3)(A) Section 2701(b)(2) is amended by adding at the end thereof the following new subparagraph:

"(C) Applicable family member.—For purposes of this subsection, the term 'applicable family member' includes any lineal descendant of any parent of the transferor or the transferor's spouse."

(B) Section 2701(e)(3) is amended—

(i) by striking subparagraph (B), and

(ii) by striking so much of paragraph (3) as precedes "shall be treated as holding" and inserting:

"(3) ATTRIBUTION OF INDIRECT HOLDINGS AND TRANSFERS.—An individual".

(C) Section 2704(c)(3) is amended by striking "section 2701(e)(3)(A)" and inserting "section 2701(e)(3)".

(4) Clause (i) of section 2701(c)(1)(B) is amended to read as follows:

"(i) a right to distributions with respect to any interest which is junior to the rights of the transferred interest,".

(5)(A) Clause (i) of section 2701(c)(3)(C) is amended to read as follows:

"(i) IN GENERAL.—Payments under any interest held by a transferor which (without regard to this subparagraph) are qualified payments shall be treated as qualified payments unless the transferor elects not to treat such payments as qualified payments. Payments described in the preceding sentence which are held by an applicable family member shall be treated as qualified payments only if such member elects to treat such payments as qualified payments."

(B) The first sentence of section 2701(c)(3)(C)(ii) is amended to read as follows: "A transferor or applicable family member holding any distribution right which (without regard to this subparagraph) is not a qualified payment may elect to treat such right as a qualified payment, to be paid in the amounts and at the times specified in such election."

(C) The time for making an election under the second sentence of section 2701(c)(3)(C)(i) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) shall not expire before the due date (including extensions) for filing the transferor's return of the tax imposed by section 2501 of such Code for calendar year 1991.

(6) Section 2701(d)(3)(A)(iii) is amended by striking "the period ending on the date of".

(7) Subclause (I) of section 2701(d)(3)(B)(ii) is amended by inserting "or the exclusion under section 2503(b)," after "section 2523,".

(8) Section 2701(e)(5) is amended—

(A) by striking "such contribution to capital or such redemption, recapitalization, or other change" in subparagraph (A) and inserting "such transaction", and

(B) by striking "the transfer" in subparagraph (B) and inserting "such transaction".

(9) Section 2701(d)(4) is amended by adding at the end thereof the following new subparagraph:

"(C) TRANSFER TO TRANSFERORS.—In the case of a taxable event described in paragraph (3)(A)(ii) involving a transfer of an applicable retained interest from an applicable family member to a transferor, this subsection shall continue to apply to the transferor during any period the transferor holds such interest."

(10) Section 2701(e)(6) is amended by inserting "or to reflect the application of subsection (d)" before the period at the end thereof.

(11)(A) Section 2702(a)(3)(A) is amended—

(i) by striking "to the extent" and inserting "if" in clause (i),

(ii) by striking "or" at the end of clause (i),

(iii) by striking the period at the end of clause (ii) and inserting ", or", and

(iv) by adding at the end thereof the following new clause:

"(iii) to the extent that regulations provide that such transfer is not inconsistent with the purposes of this section."

(B)(i) Section 2702(a)(3) is amended by striking "incomplete transfer" each place it appears and inserting "incomplete gift".

(ii) The heading for section 2702(a)(3)(B) is amended by striking "INCOMPLETE TRANSFER" and inserting "INCOMPLETE GIFT".

(12) Section 2703(b)(2) is amended by striking "members of the decedent's family" and inserting "natural objects of the bounty of the transferor".

(g) AMENDMENTS RELATED TO SUBTITLE G.—

(1)(A) Subsection (a) of section 1248 is amended—

(i) by striking ", or if a United States person receives a distribution from a foreign corporation which, under section 302 or 331, is treated as an exchange of stock" in paragraph (1), and

(ii) by adding at the end thereof the following new sentence: "For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock."

(B) Paragraph (1) of section 1248(e) is amended by striking "or receives a distribution from a domestic corporation which, under section 302 or 331, is treated as an exchange of stock".

(C) Subparagraph (B) of section 1248(f)(1) is amended by striking "or 361(c)(1)" and inserting "355(c)(1), or 361(c)(1)".

(D) Paragraph (1) of section 1248(i) is amended to read as follows:

"(1) IN GENERAL.—If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, such 10-percent corporate shareholder shall recognize gain in the same manner as if the stock of the foreign corporation received in such exchange had been—

"(A) issued to the 10-percent corporate shareholder, and

"(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).

The amount of gain recognized by such 10-percent corporate shareholder under the preceding sentence shall not exceed the amount treated as a dividend under this section."

(2) Section 897 is amended by striking subsection (f).

(3) Paragraph (13) of section 4975(d) is amended by striking "section 408(b)" and inserting "section 408(b)(12)".

(4) Clause (iii) of section 56(g)(4)(D) is amended by inserting ", but only with respect to taxable years beginning after December 31, 1989" before the period at the end thereof.

(5)(A) Paragraph (11) of section 11701(a) of the Revenue Reconciliation Act of 1990 (and the amendment made by such paragraph) are hereby repealed, and section 7108(r)(2) of the Revenue Reconciliation Act of 1989 shall be applied as if such paragraph (and amendment) had never been enacted.

(B) Subparagraph (A) shall not apply to any building if the owner of such building establishes to the satisfaction of the Secretary of the Treasury or his delegate that such owner reasonably relied on the amendment made by such paragraph (11).

(h) AMENDMENTS RELATED TO SUBTITLE H.—

(1)(A) Clause (vi) of section 168(e)(3)(B) is amended by striking "or" at the end of subclause (I), by striking the period at the end of subclause (II) and inserting ", or", and by adding at the end thereof the following new subclause:

"(III) is described in section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)."

(B) Subparagraph (K) of section 168(g)(4) is amended by striking "section 48(a)(3)(A)(iii)" and inserting "section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(2) Clause (ii) of section 172(b)(1)(E) is amended by striking "subsection (m)" and inserting "subsection (h)".

(3) Sections 805(a)(4)(E), 832(b)(5)(C)(ii)(II), and 832(b)(5)(D)(ii)(II) are each amended by striking "243(b)(5)" and inserting "243(b)(2)".

(4) Subparagraph (A) of section 243(b)(3) is amended by inserting "of" after "In the case".

(5) The subsection heading for subsection (a) of section 280F is amended by striking "INVESTMENT TAX CREDIT AND".

(6) Clause (i) of section 1504(c)(2)(B) is amended by inserting "section" before "243(b)(2)".

(7) Paragraph (3) of section 341(f) is amended by striking "351, 361, 371(a), or 374(a)" and inserting "351, or 361".

(8) Paragraph (2) of section 243(b) is amended to read as follows:

"(2) AFFILIATED GROUP.—For purposes of this subsection:

"(A) IN GENERAL.—The term 'affiliated group' has the meaning given such term by section 1504(b), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

"(B) GROUP MUST BE CONSISTENT IN FOREIGN TAX TREATMENT.—The requirements of paragraph (1)(A) shall not be treated as being met with respect to any dividend received by a corporation if, for any taxable year which includes the day on which such dividend is received—

"(i) 1 or more members of the affiliated group referred to in paragraph (1)(A) choose to any extent to take the benefits of section 901, and "(ii) 1 or more other members of such group claim to any extent a deduction for taxes otherwise creditable under section 901.".

(9) The amendment made by section 11813(b)(17) of the Revenue Reconciliation Act of 1990 shall be applied as if the material stricken by such amendment included the closing parenthesis after "section 48(a)(5)".

(10) Paragraph (1) of section 179(d) is amended—

(A) by striking "in a trade or business" and inserting "a trade or business", and

(B) by adding at the end thereof the following new sentence: "Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units and horses".

(11) Subparagraph (E) of section 50(a)(2) is amended by striking "section 48(a)(5)(A)" and inserting "section 48(a)(5)".

(12) The amendment made by section 11801(c)(9)(G)(ii) of the Revenue Reconciliation Act of 1990 shall be applied as if it struck "Section 422A(c)(2)" and inserted "Section 422(c)(2)".

(13) Subparagraph (B) of section 424(c)(3) is amended by striking "a qualified stock option, an incentive stock option, an option granted under an employee stock purchase plan, or a restricted stock option" and inserting "an incentive stock option or an option granted under an employee stock purchase plan".

(14) Subsections (a)(45), (b)(14), and (c)(21) of section 11801 of the Revenue Reconciliation Act of 1990 are hereby repealed, and the Internal Revenue Code of 1986 shall be applied and administered as if such subsections (and the amendments made by such subsections) had not been enacted.

(15) Subparagraph (E) of section 1367(a)(2) is amended by striking "section 613A(c)(13)(B)" and inserting "section 613A(c)(11)(B)".

(16) Subparagraph (B) of section 460(e)(6) is amended by striking "section 167(k)" and inserting "section 168(e)(2)(A)(ii)".

(17) Subparagraph (C) of section 172(h)(4) is amended by striking "subsection (b)(1)(M)" and inserting "subsection (b)(1)(E)".

(18) Section 6503 is amended—

(A) by redesignating the subsection relating to extension in case of certain summonses as subsection (j), and

(B) by redesignating the subsection relating to cross references as subsection (k).

(19) Paragraph (4) of section 1250(e) is hereby repealed.

(i) Effective Date.—Any amendment made by this section shall take effect as if included in the provision of the Revenue Reconciliation Act of 1990 to which such amendment relates.

SEC. 103. MISCELLANEOUS PROVISIONS.

(a) Application of Amendments Made by Title XII of Omnibus Budget Reconciliation Act of 1990.—Except as otherwise expressly provided, whenever in title XII of the Omnibus Budget Reconciliation Act of 1990 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(b) Treatment of Certain Amounts Under Hedge Bond Rules.—

(1) Clause (iii) of section 149(g)(3)(B) is amended to read as follows:

"(iii) Amounts held pending reinvestment or redemption.—Amounts held for not more than 30 days pending reinvestment or bond redemption shall be treated as invested in bonds described in clause (i)."

(2) The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 7651 of the Omnibus Budget Reconciliation Act of 1989.

(c) Treatment of Certain Distributions Under Section 1445.—

(1) In general.—Paragraph (3) of section 1445(e) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation."

(2) Effective date.—The amendment made by paragraph (1) shall apply to distributions after the date of the enactment of this Act.

(d) Treatment of Certain Credits Under Section 469.—

(1) In general.—Subparagraph (B) of section 469(c)(3) is amended by adding at the end thereof the following new sentence: "If the preceding sentence ap-

plies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27(a)) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

(e) TREATMENT OF DISPOSITIONS UNDER PASSIVE LOSS RULES.—

(1) IN GENERAL.—Subparagraph (A) of section 469(g)(1) is amended to read as follows:

"(A) IN GENERAL.—If all gain or loss realized on such disposition is recognized, the excess of—

"(i) any loss from such activity for such taxable year (determined after the application of subsection (b)), over

"(ii) any net income or gain for such taxable year from all other passive activities (determined after the application of subsection (b)),

shall be treated as a loss which is not from a passive activity."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

(f) MISCELLANEOUS AMENDMENTS TO FOREIGN PROVISIONS.—

(1) COORDINATION OF UNIFIED ESTATE TAX CREDIT WITH TREATIES.—Subparagraph (A) of section 2102(c)(3) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.".

(2) TREATMENT OF CERTAIN INTEREST PAID TO RELATED PERSON.—

(A) IN GENERAL.—Subparagraph (B) of section 163(j)(1) is amended by inserting before the period at the end thereof the following: "(and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated)".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply as if included in the amendments made by section 7210(a) of the Revenue Reconciliation Act of 1989.

(3) TREATMENT OF INTEREST ALLOCABLE TO EFFECTIVELY CONNECTED INCOME.—

(A) IN GENERAL.—

(i) Subparagraph (B) of section 884(f)(1) is amended by striking "to the extent" and all that follows down through "subparagraph (A)" and inserting "to the extent that the allocable interest exceeds the interest described in subparagraph (A)".

(ii) The second sentence of section 884(f)(1) is amended by striking "reasonably expected" and all that follows down through the period at the end thereof and inserting "reasonably expected to be allocable interest.".

(iii) Paragraph (2) of section 884(f) is amended to read as follows:

"(2) ALLOCABLE INTEREST.—For purposes of this subsection, the term 'allocable interest' means any interest which is allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States."

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the amendments made by section 1241(a) of the Tax Reform Act of 1986.

(4) CLARIFICATION OF SOURCE RULE.—

(A) IN GENERAL.—Paragraph (2) of section 865(b) is amended by striking "863(b)" and inserting "863".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 1211 of the Tax Reform Act of 1986.

(5) REPEAL OF OBSOLETE PROVISIONS.—

(A) Paragraph (1) of section 6038(a) is amended by striking ", and" at the end of subparagraph (E) and inserting a period, and by striking subparagraph (F).

(B) Subsection (b) of section 6038A is amended by adding "and" at the end of paragraph (2), by striking ", and" at the end of paragraph (3) and inserting a period, and by striking paragraph (4).

(g) Treatment of Assignment of Interest in Certain Bond-Financed Facilities.—

(1) In general.—Subparagraph (A) of section 1317(3) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new sentence: "A facility shall not fail to be treated as described in this subparagraph by reason of an assignment (or an agreement to an assignment) by the governmental unit on whose behalf the bonds are issued of any part of its interest in the property financed by such bonds to another governmental unit."

(2) Effective date.—The amendment made by paragraph (1) shall take effect as if included in such section 1317 on the date of the enactment of the Tax Reform Act of 1986.

(h) Clarification of Treatment of Medicare Entitlement Under COBRA Provisions.—

(1) In general.—

(A) Subclause (V) of section 4980B(f)(2)(B)(i) is amended to read as follows:

"(V) Medicare entitlement followed by qualifying event.—In the case of a qualifying event described in paragraph (3)(B) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this clause before the close of the 36-month period beginning on the date the covered employee became so entitled."

(B) Clause (v) of section 602(2)(A) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(v) Medicare entitlement followed by qualifying event.—In the case of a qualifying event described in section 603(2) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled."

(C) Clause (iv) of section 2202(2)(A) of the Public Health Service Act is amended to read as follows:

"(iv) Medicare entitlement followed by qualifying event.—In the case of a qualifying event described in section 2203(2) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled."

(2) Effective Date.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1989.

(i) Miscellaneous Clerical Amendments.—

(1) Subclause (II) of section 56(g)(4)(C)(ii) is amended by striking "of the subclause" and inserting "of subclause".

(2) Paragraph (2) of section 72(m) is amended by inserting "and" at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(3) Paragraph (2) of section 86(b) is amended by striking "adusted" and inserting "adjusted".

(4)(A) The heading for section 112 is amended by striking "**COMBAT PAY**" and inserting "**COMBAT ZONE COMPENSATION**".

(B) The item relating to section 112 in the table of sections for part III of subchapter B of chapter 1 is amended by striking "combat pay" and inserting "combat zone compensation".

(C) Paragraph (1) of section 3401(a) is amended by striking "combat pay" and inserting "combat zone compensation".

(5) Clause (i) of section 172(h)(3)(B) is amended by striking the comma at the end thereof and inserting a period.

(6) Clause (ii) of section 543(a)(2)(B) is amended by striking "section 563(c)" and inserting "section 563(d)".

(7) Paragraph (1) of section 958(a) is amended by striking "sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)" and inserting "section 960(a)(1)".

(8) Subparagraph (B) of section 4092(b)(1) is amended by striking "or" at the end of clause (i).

(9) Subsection (g) of section 642 is amended by striking "under 2621(a)(2)" and inserting "under section 2621(a)(2)".

(10) Section 1463 is amended by striking "this subsection" and inserting "this section".

(11) Subsection (k) of section 3306 is amended by inserting a period at the end thereof.

(12) The item relating to section 4472 in the table of sections for subchapter B of chapter 36 is amended by striking "and special rules".

(13) Paragraph (2) of section 4978(b) is amended by striking the period at the end of subparagraph (A) and inserting a comma, and by striking the period and quotation marks at the end of subparagraph (B) and inserting a comma.

(14) Paragraph (3) of section 5134(c) is amended by striking "section 6662(a)" and inserting "section 6665(a)".

(15) Paragraph (2) of section 5206(f) is amended by striking "section 5(e)" and inserting "section 105(e)".

(16) Paragraph (1) of section 6050B(c) is amended by striking "section 85(c)" and inserting "section 85(b)".

(17) Subsection (k) of section 6166 is amended by striking paragraph (6).

(18) Subsection (e) of section 6214 is amended to read as follows:

"(e) Cross Reference.—

"For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2)."

(19) The section heading for section 6043 is amended by striking the semicolon and inserting a comma.

(20) The item relating to section 6043 in the table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking the semicolon and inserting a comma.

(21) The table of sections for part I of subchapter A of chapter 68 is amended by striking the item relating to section 6662.

(22)(A) Section 7232 is amended—

(i) by striking "**LUBRICATING OIL,**" in the heading, and

(ii) by striking "lubricating oil," in the text.

(B) The table of sections for part II of subchapter A of chapter 75 is amended by striking "lubricating oil," in the item relating to section 7232.

(23) Paragraph (1) of section 6701(a) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "subclause (IV)" and inserting "subclause (V)".

(24) Clause (ii) of section 7304(a)(2)(D) of such Act is amended by striking "subsection (c)(2)" and inserting "subsection (c)".

(25) Paragraph (1) of section 7646(b) of such Act is amended by striking "section 6050H(b)(1)" and inserting "section 6050H(b)(2)".

(26) Paragraph (10) of section 7721(c) of such Act is amended by striking "section 6662(b)(2)(C)(ii)" and inserting "section 6661(b)(2)(C)(ii)".

(27) Subparagraph (A) of section 7811(i)(3) of such Act is amended by inserting "the first place it appears" before "in clause (i)".

(28) Paragraph (10) of section 7841(d) of such Act is amended by striking "section 381(a)" and inserting "section 381(c)".

(29) Paragraph (2) of section 7861(c) of such Act is amended by inserting "the second place it appears" before "and inserting".

(30) Paragraph (1) of section 460(b) is amended by striking "the look-back method of paragraph (3)" and inserting "the look-back method of paragraph (2)".

(31) The heading for paragraph (2) of section 6427(b) is amended by striking "3-CENT" and inserting "3.1-CENT".

TITLE II—MEDICARE MISCELLANEOUS AND TECHNICAL AMENDMENTS

SEC. 200. REFERENCES TO OBRA-1990; EFFECTIVE DATE.

(a) References to Omnibus Budget Reconciliation Act of 1990.—In this title, the term "OBRA-1990" means the Omnibus Budget Reconciliation Act of 1990.

(b) Effective Date.—Except where otherwise provided, the amendments made by this title and the provisions of this title shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1990.

Subtitle A—Amendments Relating to Part A of the Medicare Program

SEC. 201. EXCLUDING DISTINCT PSYCHIATRIC AND REHABILITATION UNITS FROM ADJUSTMENT TO PAYMENT AMOUNTS FOR PPS-EXEMPT HOSPITALS (SECTION 4005 OF OBRA-1990).

(a) IN GENERAL.—Section 1886(b)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(b)(1)(B)(ii)), as amended by section 4005(a)(1) of OBRA-1990, is amended by striking "(ii) in the case of" and inserting "(ii) for a hospital that is not a subsection (d) hospital (other than a unit of a hospital described in subsection (d)(1)(B)(ii)), in the case of".

(b) CONFORMING AMENDMENT.—Section 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B)) is amended—

(1) in clause (i), by striking "1861(f))," and inserting "1861(f)) or a rehabilitation hospital (as defined by the Secretary),";

(2) by amending clause (ii) to read as follows:

"(ii) in accordance with regulations of the Secretary, a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary),"; and

(3) by striking the semicolon at the end of clause (v) and all that follows and inserting a period.

SEC. 202. CLARIFICATION OF DRG PAYMENT WINDOW EXPANSION (SECTION 4003 OF OBRA-1990).

(a) APPLICATION TO WHOLLY OWNED ENTITIES.—Section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395ww(a)(4)), as amended by section 4003(a) of OBRA-1990, is amended—

(1) in the first sentence, by striking "wholly owned or operated by" and inserting "related to"; and

(2) by adding at the end the following new sentence: "In the first sentence of this paragraph, an entity is 'related to' a hospital if the hospital is to a significant extent associated or affiliated with or has control of or is controlled by the entity.".

(b) NON-APPLICATION TO PPS-EXEMPT HOSPITALS.—The first sentence of section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4)) is further amended by striking "and includes" and inserting "and (in the case of a subsection (d) hospital) includes".

SEC. 203. ESSENTIAL ACCESS COMMUNITY HOSPITAL PROGRAM.

(a) INCREASING NUMBER OF PARTICIPATING STATES.—Section 1820(a)(1) of the Social Security Act (42 U.S.C. 1395i-4(a)(1)) is amended by striking "7" and inserting "9".

(b) PERMITTING DESIGNATION OF HOSPITALS LOCATED IN URBAN AREAS.—Section 1820 of the Social Security Act (42 U.S.C. 1395i-4) is amended—

(1) by striking paragraph (1) of subsection (e) and redesignating paragraphs (2) through (6) as paragraphs (1) through (5); and

(2) in subsection (e)(1)(A) (as redesignated by paragraph (1)—

(A) by striking ", (ii)" and inserting "or (ii)",

(B) by striking "or (iii)" and all that follows through "section,", and

(C) in subsection (i)(1)(B), by striking "paragraph (3)" and inserting "paragraph (2)".

(c) PERMITTING HOSPITALS LOCATED IN ADJOINING STATES TO PARTICIPATE IN STATE PROGRAM.—

(1) IN GENERAL.—Section 1820 of such Act (42 U.S.C. 1395i-4) is amended—

(A) by redesignating subsection (k) as subsection (l); and

(B) by inserting after subsection (j) the following new subsection:

"(k) ELIGIBILITY OF HOSPITALS NOT LOCATED IN PARTICIPATING STATES.—Notwithstanding any other provision of this section—

"(1) for purposes of including a hospital or facility as a member institution of a rural health network, a State may designate a hospital or facility that is not located in the State as an essential access community hospital or a rural primary care hospital if the hospital or facility is located in an adjoining State and is otherwise eligible for designation as such a hospital; and

"(2) the Secretary may designate a hospital or facility that is not located in a State receiving a grant under subsection (a)(1) as an essential access community hospital or a rural primary care hospital if the hospital or facility is a member institution of a rural health network of a State receiving a grant under such subsection.

"(3) a hospital or facility designated by a State pursuant to paragraph (1) shall be eligible to receive a grant under subsection (a)(2).".

(2) CONFORMING AMENDMENT.—Section 1820(c)(1) of such Act (42 U.S.C. 1395i-4(c)(1)) is amended by striking "paragraph (3)" and inserting "paragraph (3) or subsection (k)".

(d) Clarification of Physician Staffing Requirement for Rural Primary Care Hospitals.—Section 1820(f)(1)(H) of such Act (42 U.S.C. 1395i–4(f)(1)(H)) is amended by striking the period and inserting the following: ", except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a 'physician' is a reference to a physician as defined in section 1861(r)(1).".

(e) Miscellaneous Technical Amendments.—(1) Section 1812(a)(1) of such Act (42 U.S.C. 1395d(a)(1)) is amended—

(A) by striking "inpatient hospital services" the first place it appears and inserting "inpatient hospital services or inpatient rural primary care hospital services";

(B) by striking "inpatient hospital services" the second place it appears and inserting "such services"; and

(C) by striking "and inpatient rural primary care hospital services".

(2) Sections 1813(a) and 1813(b)(3)(A) of such Act (42 U.S.C. 1395e(a), 1395e(b)(3)(A)) are each amended by striking "inpatient hospital services" each place it appears and inserting "inpatient hospital services or inpatient rural primary care hospital services".

(3) Section 1813(b)(3)(B) of such Act (42 U.S.C. 1395e(b)(3)(B)) is amended by striking "inpatient hospital services" and inserting "inpatient hospital services, inpatient rural primary care hospital services".

(4) Section 1861(a) of such Act (42 U.S.C. 1395x(a)) is amended—

(A) in paragraphs (1), by striking "inpatient hospital services" and inserting "inpatient hospital services, inpatient rural primary care hospital services"; and

(B) in paragraph (2), by striking "hospital" and inserting "hospital or rural primary care hospital".

SEC. 204. CARE OF PATIENTS RECEIVING QUALIFIED PSYCHOLOGIST SERVICES.

Section 1861(e)(4) of the Social Security Act (42 U.S.C. 1395x(e)(4)) is amended by striking "physician;" and inserting "physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii)) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;".

SEC. 205. TREATMENT OF CERTAIN MILITARY FACILITIES.

(a) Coverage of Services Provided in Certain Uniformed Services Treatment Facilities.—

(1) In general.—The Secretary of Health and Human Services may not take any action to recover amounts that were paid by the United States under title XVIII of the Social Security Act to the facilities described in paragraph (2) (or to other individuals or entities with whom such facilities had entered into agreements to provide services under such title) for services provided during the period beginning October 1, 1986, and ending December 31, 1989.

(2) Facilities described.—The facilities referred to in paragraph (1) are the hospitals described in section 248c of title 42, United States Code, that are located in Boston, Massachusetts; Baltimore, Maryland; and Seattle, Washington.

(b) Study of Joint Medical Facility.—

(1) Study.—The Secretary of Health and Human Services, in consultation with the Secretary of Defense, shall conduct a study of the feasibility and desirability of establishing a joint medical facility among the Department of Defense, the Department of Veterans' Affairs, and other public and private entities, and shall include in such study an analysis of the need to make changes in the medicare and medicaid programs (including facility certification standards under such programs) in order to facilitate the establishment of such joint medical facility.

(2) Report.—Not later than June 1, 1992, the Secretary of Health and Human Services shall submit a report on the study conducted under paragraph (1) to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives.

SEC. 206. TECHNICAL CORRECTION RELATING TO NURSING HOME REFORM (SECTION 4008 OF OBRA-1990).

Section 1819(b)(3)(C)(i)(I) of the Social Security Act (42 U.S.C. 1395i–3(b)(3)(C)(i)(I)), as amended by section 4008(h)(2)(C) of OBRA-1990, is amended by striking "not later than" before "14 days".

Subtitle B—Amendments Relating to Part B of the Medicare Program

SEC. 211. PHYSICIAN PAYMENT PROVISIONS (SECTIONS 4101 THROUGH 4118 OF OBRA-1990).

(a) Overvalued Procedures (Section 4101 of OBRA-1990).—(1) Section 1842(b)(16)(B)(iii) of the Social Security Act, as added by section 4101(b) of OBRA-1990, is amended—

(A) by striking ", simple and subcutaneous",

(B) by striking "; small" and inserting "and small",

(C) by striking "treatments;" the first place it appears and inserting "and",

(D) by striking "lobectomy;",

(E) by striking "enterectomy; colectomy; cholecystectomy;",

(F) by striking "; transurerethral resection" and inserting "and resection", and

(G) by striking "sacral laminectomy;".

(2) Section 4101(b)(2) of OBRA-1990 is amended—

(A) in the matter before subparagraph (A), by striking "1842(b)(16)" and inserting "1842(b)(16)(B)", and

(B) in subparagraph (B)—

(i) by striking ", simple and subcutaneous",

(ii) by striking "(HCPCS codes 19160 and 19162)" and inserting "(HCPCS code 19160)", and

(iii) by striking all that follows "(HCPCS codes 92250" and inserting "and 92260).".

(b) Radiology Services (Section 4102 of OBRA-1990).—(1) Section 1834(b)(4) of the Social Security Act is amended by redesignating subparagraphs (E) and (F) (as previously redesignated by section 4102(a)(1) of OBRA-1990) as subparagraphs (F) and (G), respectively.

(2) Section 1834(b)(4)(D) of the Social Security Act, as inserted by section 4102(a)(2) of OBRA-1990, is amended—

(A) in the matter before clause (i), by striking "shall be determined as follows:" and inserting "shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:",

(B) in clause (iv), by striking "Local adjustment.—Subject to clause (vii), the conversion factor to be applied to" and inserting "Adjusted conversion factor.—The adjusted conversion factor for",

(C) in clause (vii), by striking "under this subparagraph", and

(D) in clause (vii), by inserting "reduced under this subparagraph by" after "shall not be".

(3) Section 4102(c)(2) of OBRA-1990 is amended by striking "radiology services" and all that follows and inserting "nuclear medicine services".

(4) Section 4102(d) of OBRA-1990 is amended by striking "new paragraph" and inserting "new subparagraph".

(5) Section 1834(b)(4)(E) of the Social Security Act, as inserted by section 4102(d) of OBRA-1990, is amended by inserting "Rule for certain scanning services.—" after "(E)".

(6) Section 1848(a)(2)(D)(iii) of the Social Security Act, as added by section 4102(g)(2)(B) of OBRA-1990, is amended by striking "that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989" and by striking "provided under such section" and inserting "provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989".

(c) Anesthesia Services (Section 4103 of OBRA-1990).—(1) Section 4103(a) of OBRA-1990 is amended by striking "Reduction in Fee Schedule" and inserting "Reduction in Prevailing Charges".

(2) Section 1842(q)(1)(B) of the Social Security Act, as inserted by section 4103(a)(2) of OBRA-1990, is amended—

(A) in the matter before clause (i), by striking "shall be determined as follows:" and inserting "shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:", and

(B) in clause (iii), by striking "Subject to clause (iv), the prevailing charge conversion factor to be applied in" and inserting "The adjusted prevailing charge conversion factor for".

(d) Assistants at Surgery (Section 4107 of OBRA-1990).—(1) Section 1848(i)(2)(B) of the Social Security Act, as added by section 4107(a)(1) of OBRA-1990, is amended by striking "performed under this part" and inserting "paid under this part".

(2) Section 4107(c) of OBRA-1990 is amended by inserting "(a)(1)" after "subsection".

(3) Section 4107(a)(2) of OBRA-1990 is amended by adding at the end the following: "In applying section 1848(g)(2)(D) of the Social Security Act for services of an assistant-at-surgery furnished during 1991, the recognized payment amount shall not exceed the maximum amount specified under section 1848(i)(2)(A) of such Act (as applied under this paragraph in such year).".

(e) TECHNICAL COMPONENTS OF DIAGNOSTIC SERVICES (SECTION 4108 OF OBRA-1990).—Section 1842(b) of the Social Security Act is amended by redesignating paragraph (18), as added by section 4108(a) of OBRA-1990, as paragraph (17) and, in such paragraph, by inserting ", tests specified in paragraph (14)(C)(i)," after "diagnostic laboratory tests".

(f) STATEWIDE FEE SCHEDULES (SECTION 4117 OF OBRA-1990).—Section 4117 of OBRA-1990 is amended—

(1) in subsection (a)—

(A) by striking "IN GENERAL.—", and

(B) by striking ", if the" and all that follows through "1991,"; and

(2) by striking subsections (b), (c), and (d).

(g) RECIPROCAL BILLING ARRANGEMENTS (SECTION 4110 OF OBRA-1990).—Clause (D) of section 1842(b)(6) of the Social Security Act, as inserted by section 4110(a)(2) of OBRA-1990), is amended to read as follows: "(D) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days; and (iv) the claim form submitted to the carrier for such services includes the second physician's unique identifier (provided under the system established under subsection (r)) and indicates that the claim meets the requirements of this clause for payment to the first provider".

(h) STUDY OF AGGREGATION RULE FOR CLAIMS OF SIMILAR PHYSICIAN SERVICES (SECTION 4113 OF OBRA-1990).—Section 4113 of OBRA-1990 is amended—

(1) by inserting "of the Social Security Act" after "1869(b)(2)"; and

(2) by striking "December 31, 1992" and inserting "December 31, 1993".

(i) OTHER MISCELLANEOUS AND TECHNICAL AMENDMENTS.—(1) The heading of section 1834(f) of the Social Security Act (42 U.S.C. 1395m(f)), as amended by section 4104(a) of OBRA-1990, is amended by striking "FISCAL YEAR".

(2)(A) Section 4105(b) of OBRA-1990 is amended—

(i) in paragraph (2), by striking "amendments" and inserting "amendment", and

(ii) in paragraph (3), by striking "amendments made by paragraphs (1) and (2)" and inserting "amendment made by paragraph (1)".

(B) Section 1848(f)(2)(C) of the Social Security Act (42 U.S.C. 1395w-4(f)(2)(C)), as added by section 4105(c)(2) of OBRA-1990, is amended by inserting "PERFORMANCE STANDARD RATES OF INCREASE FOR FISCAL YEAR 1991.—" after "(C)".

(C) Section 4105(d) of OBRA-1990 is amended by inserting "PUBLICATION OF PERFORMANCE STANDARD RATES.—" after "(d)".

(3) Section 1842(b)(4)(F) of the Social Security Act (42 U.S.C. 1395u(b)(4)(F)), as amended by section 4106(a)(1) of OBRA-1990, is amended—

(A) in clause (i), by striking "prevailing charge" the first place it appears and inserting "customary charge"; and

(B) in clause (ii)(III), by striking "second, thrid, and fourth" and inserting "first, second, and third".

(4) Section 1842(b)(4)(F)(ii)(I) of the Social Security Act (42 U.S.C. 1395u(b)(4)(F)(ii)(I)), as amended by section 4106(a)(1) of OBRA-1990, is amended by striking "respiratory therapist,".

(5) Section 4106(c) of OBRA-1990 is amended by inserting "of the Social Security Act" after "1848(d)(1)(B)".

(6) Section 4114 of OBRA-1990 is amended by striking "patients" the second place it appears.

(7) Section 1848(e)(1)(C) of the Social Security Act, as added by section 4118(c)(2) of OBRA-1990, is amended by inserting "date of the" after "since the".

(8) Section 4118(f)(1)(D) of OBRA-1990 is amended by striking "is amended".

(9) Section 4118(f)(1)(N)(ii) of such Act is amended by striking "subsection (f)(5)(A)" and inserting "subsection (f)(5)(A))".

(10) Section 1845(e) of the Social Security Act (42 U.S.C. 1395w-1(e)), as amended by section 4118(j)(1)(D) of OBRA-1990, is amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4).

(11) Section 4118(j)(2) of OBRA–1990 is amended by striking "In section" and inserting "Section".

(12)(A) Section 1848(i)(3) of the Social Security Act, as added by section 4118(k) of OBRA–1990, is amended by striking the space before the period at the end.

(B) Section 1834(a)(10)(B) of the Social Security Act is amended by striking "as such provisions apply to physicians' services and physicians and a reasonable charge under section 1842(b)".

SEC. 212. SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS (SECTION 4151 OF OBRA-1990).

(a) PAYMENT AMOUNTS FOR SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS.—(1)(A) Section 1833(i)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395l(i)(2)(A)(i)) is amended by striking the comma at the end and inserting the following: ", as determined in accordance with a survey (based upon a representative sample of procedures and facilities) taken not later than July 1, 1993, and every 5 years thereafter, of the actual audited costs incurred by such centers in providing such services,".

(B) Section 1833(i)(2) of such Act (42 U.S.C. 1395l(i)(2)) is amended—

(i) in the second sentence of subparagraph (A) and the second sentence of subparagraph (B), by striking "and may be adjusted by the Secretary, when appropriate,"; and

(ii) by adding at the end the following new subparagraph:

"(C) Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), if the Secretary has not updated amounts established under such subparagraphs with respect to facility services furnished during a fiscal year (beginning with fiscal year 1994), such amounts shall be increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with March of the preceding fiscal year.".

(C) The second sentence of section 1833(i)(1) of such Act (42 U.S.C. 1395l(i)(1)) is amended by striking the period and inserting the following: ", in consultation with appropriate trade and professional organizations.".

(2) Section 4151(c)(3) of OBRA–1990 is amended by striking "for the insertion of an intraocular lens" and inserting "for an intraocular lens inserted".

(b) ADJUSTMENTS TO PAYMENT AMOUNTS FOR NEW TECHNOLOGY INTRAOCULAR LENSES.—(1) Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services (hereafter referred to as the "Secretary") shall develop and implement a process under which interested parties may request review by the Secretary of the appropriateness of the reimbursement amount provided under section 1333(i)(2)(A)(iii) of the Social Security Act with respect to a class of new technology intraocular lenses. For purposes of the preceding sentence, an intraocular lens may not be treated as a new technology lens unless it has been approved by the Food and Drug Administration.

(2) In determining whether to provide an adjustment of payment with respect to a particular lens under paragraph (1), the Secretary shall take into account whether use of the lens is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

(3) The Secretary shall publish notice in the Federal Register from time to time (but no less often than once each year) of a list of the requests that the Secretary has received for review under this subsection, and shall provide for a 30-day comment period on the lenses that are the subjects of the requests contained in such notice. The Secretary shall publish a notice of his determinations with respect to intraocular lenses listed in the notice within 90 days after the close of the comment period.

(4) Any adjustment of a payment amount (or payment limit) made under this subsection shall become effective not later than 30 days after the date on which the notice with respect to the adjustment is published under paragraph (3).

SEC. 213. DURABLE MEDICAL EQUIPMENT (SECTION 4152 OF OBRA-1990).

(a) UPDATES TO PAYMENT AMOUNTS.—Subparagraph (A) of section 1834(a)(14) of the Social Security Act, as added by section 4152(b)(4) of OBRA–1990, is amended to read as follows:

"(A) for 1991 and 1992, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced by 1 percentage point; and".

(b) Treatment of Potentially Overused Items and Advanced Determinations of Coverage.—(1) Effective on the date of the enactment of this Act, section 1834(a)(15) of the Social Security Act, as added by section 4152(e) of OBRA–1990, is amended to read as follows:

"(15) Special treatment for potentially overused items.—

"(A) Development of list of items by secretary.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that are potentially overused, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, motorized scooters, and any such other item determined by the Secretary to be potentially overused on the basis of any of the following criteria—

"(i) the item is marketed directly to potential patients;

"(ii) the item is marketed with an offer to potential patients to waive the costs of coinsurance associated with the item or is marketed as being available at no cost to policyholders of a medicare supplemental policy (as defined in section 1882(g)(1));

"(iii) the item has been subject to a consistent pattern of overutilization; or

"(iv) a high proportion of claims for payment for such item under this part may not be made because of the application of section 1862(a)(1).

"(B) Items subject to special carrier scrutiny.—Payment may not be made under this part for any item contained in the list developed by the Secretary under subparagraph (A) unless the carrier has subjected the claim for payment for the item to special scrutiny or has followed the procedures described in paragraph (11)(C) with respect to the item.".

(2) Effective January 1, 1992, section 1834(a)(11) of such Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new subparagraph:

"(C) Carrier determinations for certain items in advance.—A carrier shall determine in advance whether payment for an item may not be made under this subsection because of the application of section 1862(a)(1) if—

"(i) the item is a customized item (other than inexpensive items specified by the Secretary); or

"(ii) the item is a specified covered item under subparagraph (B).".

(3) Section 1842(c) of such Act (42 U.S.C. 1395u(c)) is amended by adding at the end the following new paragraph:

"(4) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall require the carrier to meet criteria developed by the Secretary to measure the timeliness of carrier responses to requests for payment of items described in section 1834(a)(11)(C).".

(4) Section 1834(h)(3) of such Act, as added by section 4153(a) of OBRA–1990, is amended by striking "paragraph (10) and paragraph (11)" and inserting "paragraphs (10) and (11)".

(c) Study of Variations in Durable Medical Equipment Supplier Costs.—

(1) Collection and analysis of supplier cost data.—The Administrator of the Health Care Financing Administration shall, in consultation with appropriate organizations, collect data on supplier costs of durable medical equipment for which payment may be made under part B of the medicare program, and shall analyze such data to determine the proportions of such costs attributable to the service and product components of furnishing such equipment and the extent to which such proportions vary by type of equipment and by the geographic region in which the supplier is located.

(2) Development of geographic adjustment index; reports.—Not later than January 1, 1993—

(A) the Administrator shall submit a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the data collected and the analysis conducted under subparagraph (A), and shall include in such report the Administrator's recommendations for a geographic cost adjustment index for suppliers of durable medical equipment under the medicare program and an analysis of the impact of such proposed index on payments under the medicare program; and

(B) the Comptroller General shall submit a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate analyzing on a geographic basis the supplier costs of durable medical equipment under the medicare program.

(d) Oxygen Retesting.—Section 1834(a)(5)(E) of the Social Security Act (42 U.S.C. 1395m(a)(5)(E)) is amended by striking "55" and inserting "56".

(e) Orthotic and Prosthetic Fee Schedules.—Section 1834(h)(2) of the Social Security Act (42 U.S.C. 1395m(h)(2)) is amended—

(1) in subparagraph (A)(ii)(II), by striking "1992 or 1993" and inserting "1992, 1993, or 1994";

(2) in subparagraph (B)(i), by striking "1992" and inserting "1993"; and

(3) in subparagraph (C)—

(A) in clause (i), by striking "or 1991" and inserting "1991, or 1992",

(B) in clause (ii), by striking "1992" each place it appears and inserting "1993",

(C) in clause (iii), by striking "1993" each place it appears and inserting "1994", and

(D) in clause (iv), by striking "1994" and inserting "1995".

(f) Other Technical and Conforming Amendments.—(1) Section 4152(a)(3) of OBRA-1990 is amended by striking "amendment made by subsection (a)" and inserting "amendments made by this subsection".

(2) Section 4152(c)(2) of OBRA-1990 is amended by striking "1395m(a)(7)(A)" and inserting "1395m(a)(7)".

(3) Section 1834(a)(7)(A)(iii)(II) of the Social Security Act, as inserted by section 4152(c)(2)(D) of OBRA-1990, is amended by striking "clause (v)" and inserting "clause (vi)".

(4) Section 1834(a)(7)(C)(i) of the Social Security Act, as added by section 4152(c)(2)(F) of OBRA-1990, is amended by striking "or paragraph (3)".

(5) Section 1834(a)(3) of the Social Security Act (42 U.S.C. 1395m(a)(3)), as amended by section 4152(c)(3) of OBRA-1990, is amended by striking subparagraph (D).

(6) Section 4153(c)(1) of OBRA-1990 is amended by striking "1834(a)" and inserting "1834(h)".

(7) Section 4153(d)(2) of OBRA-1990 is amended by striking "Reconiliation" and inserting "Reconciliation".

(8)(A) Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by striking paragraph (6).

(B) Section 1834(a) of such Act (42 U.S.C. 1395m) is amended—

(i) in subparagraphs (A) and (B) of paragraph (1), by striking "(2) through (7)" each place it appears and inserting "(2) through (5) and (7)";

(ii) in paragraph (7), by striking "(2) through (6)" and inserting "(2) through (5)";

(iii) in paragraph (8), by striking "paragraphs (6) and (7)" each place it appears in the matter preceding subparagraph (A) and in subparagraph (C) and inserting "paragraph (7)"; and

(iv) in paragraph (8)(A)(i), by striking "described—" and all that follows and inserting "described in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending with December 1986.".

SEC. 214. OTHER PART B ITEMS AND SERVICES (SECTIONS 4154 THROUGH 4164 OF OBRA-1990).

(a) Revision of Information on Part B Claims Forms.—Section 1833(q)(1) of the Social Security Act (42 U.S.C. 1395l(q)(1)) is amended—

(1) by striking "provider number" and inserting "unique physician identification number"; and

(2) by striking "and indicate whether or not the referring physician is an interested investor (within the meaning of section 1877(h)(5))".

(b) Consultation for Social Workers.—Effective with respect to services furnished on or after January 1, 1991, section 6113(c) of the Omnibus Budget Reconciliation Act of 1989 is amended—

(A) by inserting "and clinical social worker services" after "psychologist services"; and

(B) by striking "psychologist" the second and third place it appears and inserting "psychologist or clinical social worker".

(c) Reports on Hospital Outpatient Payment.—(1) The Omnibus Budget Reconciliation Act of 1989 is amended by striking section 6137.

(2) Section 1135(d) of the Social Security Act (42 U.S.C. 1320b-5(d)) is amended—

(1) by striking paragraph (6); and

(2) in paragraph (7)—

(A) by striking "systems" each place it appears and inserting "system"; and

(B) by striking "paragraphs (1) and (6)" and inserting "paragraph (1)".

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—(1) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, section 1833(n)(1)(B)(i)(II) of the Social Security Act (42 U.S.C. 1395l(n)(1)(B)(i)(II)) is amended—

(A) by striking "1989" and inserting "1989 and for services described in subsection (a)(2)(E)(ii) furnished on or after January 1, 1992"; and

(B) by striking "1842(b)" and inserting "1842(b) (or, in the case of services furnished on or after January 1, 1992, under section 1848)".

(2) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, section 1833(n)(1)(B)(i)(II) of the Social Security Act (42 U.S.C. 1395l(n)(1)(B)(i)(II)) is amended by striking "January 1, 1989" and inserting "April 1, 1989".

(e) Payments to Nurse Practitioners in Rural Areas (section 4155 of OBRA-1990).—(1) Section 1833(a)(1) of the Social Security Act, as amended by section 4155(b)(2) of OBRA-1990, is amended—

(A) by striking "and" before "(N)"; and

(B) with respect to the matter inserted by section 4155(b)(2)(B) of OBRA-1990—

(i) by striking "(M)" and inserting ", and (O)", and

(ii) by transferring and inserting it (as amended) immediately before the semicolon at the end.

(2) Section 1833(r)(1) of such Act, as added by section 4155(b)(3) of OBRA-1990, is amended—

(A) by striking "ambulatory" each place it appears and inserting "or ambulatory"; and

(B) by striking "center," and inserting "center".

(3) Section 1833(r)(2)(A) of such Act (42 U.S.C. 1395l(r)(2)(A)), as added by section 4155(b)(3) of OBRA-1990, is amended by striking "subsection (a)(1)(M)" and inserting "subsection (a)(1)(O)".

(4) Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by striking "subsection (s)(2)(K)(i)" and inserting "clauses (i) or (iii) of subsection (s)(2)(K)".

(5) Section 1861(aa)(5) of such Act, as amended by section 4155(d) of OBRA-1990, is amended by striking "this Act" and inserting "this title".

(6) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by striking "1861(s)(2)(K)(i)" and inserting "1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)".

(6) Section 1866(a)(1)(H) of such Act (42 U.S.C. 1395cc(a)(1)(H)) is amended by striking "1861(s)(2)(K)(i)" and inserting "1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)".

(f) Other Technical and Conforming Amendments.—

(1) Immediate enrollment in part B by individuals covered by an employment-based plan.—(A) Subparagraphs (A) and (B) of section 1837(i)(3) of the Social Security Act (42 U.S.C. 1395p(i)(3)) are each amended—

(i) by striking "beginning with the first day of the first month in which the individual is no longer enrolled" and inserting "including each month during any part of which the individual is enrolled"; and

(ii) by striking "and ending seven months later" and inserting "ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled".

(B) Paragraphs (1) and (2) of section 1838(e) of the Social Security Act (42 U.S.C. 1395q(e)) are amended to read as follows:

"(1) in any month of the special enrollment period in which the individual is at any time enrolled in a plan (specified in subparagraph (A) or (B), as applicable, of section 1837(i)(3)) or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

"(2) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.".

(C) The amendments made by subparagraphs (A) and (B) shall take effect on the first day of the first month that begins after the expiration of the 120-day period that begins on the date of the enactment of this Act.

(2) Blend amounts for ambulatory surgical center payments.—Subclauses (I) and (II) of section 1833(i)(3)(B)(ii) of the Social Security Act (42 U.S.C.

1395l(i)(3)(B)(ii)), as amended by section 4151(c)(1)(A) of OBRA-1990, are each amended—

(A) by striking "for reporting" and inserting "for portions of cost reporting"; and

(B) by striking "and on or before" and inserting "and ending on or before".

(3) CLINICAL DIAGNOSTIC LABORATORY TESTS (SECTION 4154 OF OBRA-1990).—Section 4154(e)(5) of OBRA-1990 is amended by striking "(1)(A)" and inserting "(1)(A),".

(4) SEPARATE PAYMENT UNDER PART B FOR CERTAIN SERVICES (SECTION 4157 OF OBRA-1990).—Section 4157(a) of OBRA-1990 is amended by striking "(a) SERVICES OF" and all that follows through "Section" and inserting "(a) TREATMENT OF SERVICES OF CERTAIN HEALTH PRACTITIONERS.—Section".

(5) CERTIFIED REGISTERED NURSE ANESTHETISTS (SECTION 4160 OF OBRA-1990).—Section 1833(l)(4)(B)(ii)(VII) of the Social Security Act, as inserted by section 4160(3) of OBRA-1990, is amended by striking "1997" and inserting "1996".

(6) COMMUNITY HEALTH CENTERS AND RURAL HEALTH CLINICS (SECTION 4161 OF OBRA-1990).—(A) The fourth sentence of section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2)), as added by section 4161(b)(1) of OBRA-1990, is amended—

(i) by striking "certification" the first place it appears and inserting "approval"; and

(ii) by striking "the Secretary's approval or disapproval of the certification" and inserting "Secretary's approval or disapproval".

(B) Section 4161(a)(7)(B) of OBRA-1990 is amended by inserting "and to the Committee on Finance of the Senate" after "Representatives".

(7) SCREENING MAMMOGRAPHY (SECTION 4163 OF OBRA-1990).—(A) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(i) in subsection (s)(13), as added by section 4163(a)(1) of OBRA-1990, by striking "subsection (jj)" and inserting "subsection (kk)"; and

(ii) in the subsection (jj) inserted by section 4163(a)(2) of OBRA-1990, by striking "(jj) The term" and inserting "(kk) The term".

(B) Section 1834(c)(1) of the Social Security Act, as added by section 4163(b) of OBRA-1990, is amended in the matter preceding subparagraph (A) by striking "1861(jj)" and inserting "1861(kk)".

(C) Section 4163 of OBRA-1990 is amended—

(i) by adding at the end of subsection (d) the following new paragraph:

"(3) The amendment made by paragraph (2)(A)(iv) shall apply to screening pap smears performed on or after July 1, 1990."; and

(ii) in subsection (e), by striking "The amendments" and inserting "Except as provided in subsection (d)(3), the amendments.".

(8) INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.—

(A) CLARIFICATION OF DRUGS COVERED.—The section 1861(jj) of the Social Security Act inserted by section 4156(a)(2) of OBRA-1990 is amended—

(i) in the matter preceding paragraph (1), by striking "a bone fracture related to"; and

(ii) in paragraph (1), by striking "patient" and inserting "individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual".

(B) LIMITING COVERAGE TO DRUGS PROVIDED BY HOME HEALTH AGENCIES.—(i) Section 1861(jj) of the Social Security Act (42 U.S.C. 1395x(jj)) is amended by striking "if" and inserting "by a home health agency if".

(ii) Section 1861(m)(5) of such Act (42 U.S.C. 1395x(m)) is amended by striking "but excluding" and inserting "and a covered osteoporosis drug (as defined in subsection (jj), but excluding other".

(iii) Section 1861(s)(2) of such Act (42 U.S.C. 1395x(s)(2)) is amended—

(I) by adding "and" at the end of subparagraph (N); and

(II) by striking subparagraph (O) and redesignating subparagraph (P) as subparagraph (O).

(C) PAYMENT BASED ON REASONABLE COST.—Section 1833(a)(2) of such Act (42 U.S.C. 1395l(a)(2)) is amended—

(i) in subparagraph (A), by striking "health services" and inserting "health services (other than covered osteoporosis drug (as defined in section 1861(jj)))"; and

(ii) by striking "and" at the end of subparagraph (D);

(iii) by striking the semicolon at the end and inserting "; and"; and

(iv) by adding at the end the following new subparagraph:

"(F) with respect to covered osteoporosis drug (as defined in section 1861(jj)) furnished by a home health agency, 80 percent of the reasonable cost of such service, as determined under section 1861(v);".

(D) APPLICATION OF PART B DEDUCTIBLE.—Section 1833(b)(2) of such Act (42 U.S.C. 1395l(b)(2)) is amended by striking "services" and inserting "services (other than covered osteoporosis drug (as defined in section 1861(jj))".

(9) OTHER MISCELLANEOUS AND TECHNICAL CORRECTIONS (SECTION 4164 OF OBRA-1990).—

(A) OWNERSHIP DISCLOSURE REQUIREMENTS.—(i) Section 1124A(a)(2)(A) of the Social Security Act, as inserted by section 4164(b)(1) of OBRA-1990, is amended by striking "of the Social Security Act".

(ii) Section 4164(b)(4) of OBRA-1990 is amended by striking "paragraph" and inserting "paragraphs".

(B) DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS.—Section 4164(c) of OBRA-1990 is amended by striking "publish" and inserting "publish, and shall periodically update,".

Subtitle C—Amendments Relating to Parts A and B

SEC. 221. PROVISIONS RELATING TO PARTS A AND B (SECTIONS 4201 THROUGH 4207 OF OBRA-1990).

(a) ESRD (SECTION 4201 OF OBRA-1990).—(1) Section 4201(b)(3) of OBRA-1990 is amended by striking "The Commission" and all that follows through "1993)" and inserting 'Not later than June 1, 1992 (in the case of fiscal year 1993), and not later than March 1 before the beginning of each fiscal year thereafter, the Commission".

(2) Section 1881(b)(1)(C) of the Social Security Act, as inserted by section 4201(d)(2) of OBRA-1990, is amended by striking "1861(s)(2)(Q)" and inserting "1861(s)(2)(O)".

(3) Section 4201(d)(2) of OBRA-1990 is amended by striking "(B) by striking", "(C) by striking", and "(3) by adding" and inserting "(i) by striking", "(ii) by striking", and "(B) by adding", respectively.

(b) HOME DIALYSIS DEMONSTRATION PROJECT (SECTION 4202 OF OBRA-1990).—Section 4202 of OBRA-1990 is amended—

(1) in subsection (b)(1)(A), by striking "home hemodialysis staff assistant" and inserting "qualified home hemodialysis staff assistant (as described in subsection (d))";

(2) in subsection (b)(2)(B)(ii)(I), by striking "(as adjusted to reflect differences in area wage levels);

(3) in subsection (c)(1)(A), by striking "skilled";

(4) in subsection (c)(1)(E), by striking "(b)(4)" and inserting "(b)(2)";

(5) in subsection (f)—

(A) by striking "AUTHORIZATION OF APPROPRIATIONS.—The Secretary" and inserting "FUNDING.—(1) The Secretary";

(B) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E); and

(C) by adding at the end the following new paragraph:

"(2) Funds provided under subparagraphs (B) through (E) of paragraph (1) to carry out the demonstration project established under subsection (a) in a fiscal year shall remain available until expended.".

(c) EXTENSION OF SECONDARY PAYOR PROVISIONS (SECTION 4203 OF OBRA-1990).—(1) The sentence in section 1862(b)(1)(C) of the Social Security Act added by section 4203(c)(1)(B) of OBRA-1990 is amended—

(A) by striking "on or before January 1, 1996," and inserting "before January 1, 1996"; and

(B) by striking "clauses (i) and (ii)" and inserting "this subparagraph".

(2) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, section 1862(b)(1) of the Social Security Act is amended.—

(A) in subparagraphs (A)(v) and (B)(iv)(II), by inserting ", without regard to section 5000(d) of such Code" before the period at the end of each subparagraph;

(B) in subparagraph (A)(iii), by striking "current calendar year or the preceding calendar year" and inserting "current calendar year and the preceding calendar year"; and

(C) in the matter in subparagraph (C) after clause (ii), by striking "taking into account that" and inserting "paying benefits secondary to this title when".

(3) Section 4203(c)(2) of OBRA-1990 is amended—

(A) by striking "the application of clause (iii)" and inserting "the second sentence";

(B) by striking "on individuals" and all that follows through "section 226A of such Act";

(C) in clause (ii), by striking "clause" and inserting "sentence";

(D) in clause (v), by adding "and" at the end; and

(E) in clause (vi)—

(i) by inserting "of such Act" after "1862(b)(1)(C)", and

(ii) by striking the period at the end and inserting the following: ", without regard to the number of employees covered by such plans.".

(4) Section 4203(d) of OBRA-1990 is amended by striking "this subsection" and inserting "this section".

(d) Health Maintenance Organizations (Section 4204 of OBRA-1990).—(1) Section 4204(b) of OBRA-1990 is amended to read as follows:

"(b) Revisions in the Payment Methodology for Risk Contractors.—(1)(A) The Secretary of Health and Human Services shall revise the payment method for organizations with a risk-sharing contract under section 1876(g) of the Social Security Act for years beginning with 1993.

"(B) In making the revisions required under subparagraph (A) the Secretary shall consider—

"(i) the difference in costs associated with medicare beneficiaries with differing health status and demographic characteristics;

"(ii) the effects of using alternative geographic classifications on the determinations of costs associated with beneficiaries residing in different areas; and

"(iii) the difference in costs associated with medicare beneficiaries 65 years of age or older for whom medicare is the secondary payor under section 1862(b)(1)(A) of the Social Security Act and beneficiaries for whom medicare is the primary payor.

"(2) Not later than March 1, 1992, the Secretary shall cause to have published in the Federal Register a proposed rule describing the proposed revisions in the payment methodology.

"(3) Not later than May 1, 1992, the Comptroller General shall review the proposal made pursuant to paragraph (1), and shall report to Congress on the appropriateness of the proposed modifications.

"(4) Taking into account the recommendations in the report made pursuant to paragraph (3), not later than August 31, 1992, the Secretary shall issue a final rule implementing the revised payment methodology, effective for contract years beginning on or after January 1, 1993.".

(2) Section 1876(a)(3) of the Social Security Act (42 U.S.C. 1395mm(a)(3)) is amended by striking "subsection (c)(7)" and inserting "subsections (c)(2)(B)(ii) and (c)(7)".

(3) Section 4204(c)(3) of OBRA-1990 is amended by striking "for 1991" and inserting "for years beginning with 1991".

(4) Section 4204(d)(2) of OBRA-1990 is amended by striking "amendment" and inserting "amendments".

(5) Section 1876(a)(1)(E)(ii)(I) of the Social Security Act, as added by section 4204(e)(1)(B) of OBRA-1990, is amended by striking the comma after "contributed to".

(6) Section 4204(e)(2) of OBRA-1990 is amended by striking "(which has a risk-sharing contract under section 1876 of the Social Security Act)".

(7) Section 4204(f)(4) of OBRA-1990 is amended by striking "final".

(8) Section 1862(b)(3)(C) of the Social Security Act, as added by section 4204(g)(1) of OBRA-1990, is amended—

(A) in the heading, by striking "PLAN" and inserting "PLAN OR A LARGE GROUP HEALTH PLAN";

(B) by striking "group health plan" and inserting "group health plan or a large group health plan";

(C) by striking ", unless such incentive is also offered to all individuals who are eligible for coverage under the plan"; and

(D) by striking "the first sentence of subsection (a) and other than subsection (b)" and inserting "subsections (a) and (b)".

(e) Peer Review Organizations (Section 4205 of OBRA-1990).—(1) The third sentence of section 1156(b)(1) of the Social Security Act, as inserted by section 4205(a)(1)(B) of OBRA-1990, is amended by striking "whehter" and inserting "whether".

(2) Section 1154(a)(9)(B) of the Social Security Act, as added by section 4205(d)(1)(A)(ii) of OBRA-1990, is amended by striking "this subsection" and inserting "section 1156(a)".

(3) Section 4205(d)(2)(B) of OBRA-1990 is amended by striking "amendments" and inserting "amendment".

(4) Section 1160(d) of the Social Security Act (as added by section 4205(e)(1) of OBRA-1990) is amended by striking "subpena" and inserting "subpoena".

(5) Section 4205(e)(2) of OBRA-1990 is amended by striking "amendments" and inserting "amendment" and by striking "all".

(f) Survey and Certification Requirements.—(1) Section 1864 of the Social Security Act (42 U.S.C. 1395aa) is amended—

(A) in subsection (e), by striking "title" and inserting "title (other than any fee relating to section 353 of the Public Health Service Act)"; and

(B) in the first sentence of subsection (a), by striking "1861(s) or" and all that follows through "Service Act," and inserting "1861(s),".

(2) An agreement made by the Secretary with a State under section 1864(a) of the Social Security Act may include an agreement that the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by the Secretary for the purpose of determining whether a laboratory meets the requirements of section 353 of the Public Health Service Act.

(g) Other Miscellaneous and Technical Provisions.—(1) Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by redesignating the subsection (r) added by section 4206(b)(2) of OBRA-1990 as subsection (s).

(2) Section 1866(f)(1) of the Social Security Act (42 U.S.C. 1395cc(f)(1)), as added by section 4206(a)(2) of OBRA-1990, is amended by striking "1833(r)" and inserting "1833(s)".

(3) The section following section 4206 of OBRA-1990 is amended by striking "Sec. 4027." and inserting "Sec. 4207.", and in this subsection is referred to as section 4207 of OBRA-1990.

(4) Section 4207(a)(1) of OBRA-1990 is amended by adding closing quotation marks and a period after "such review.".

(5) Section 4207(a)(4) of OBRA-1990 is amended by striking "this subsection" and inserting "paragraphs (2) and (3)".

(6) Section 4207(b)(1) of OBRA-1990 is amended by striking "section 3(7)" and inserting "section 601(a)(1)".

(7) Section 1877 of the Social Security Act (42 U.S.C. 1395nn) is amended—

(A) in the fourth sentence of subsection (f)—

(i) by striking "provided" and inserting "furnished", and

(ii) by striking "provides" and inserting "furnish".

(B) in the fifth sentence of subsection (f)—

(i) by striking "providing" each place it appears and inserting "furnishing",

(ii) by striking "with respect to the providers" and inserting "with respect to the entities", and

(iii) by striking "diagnostic imaging services of any type" and inserting "magnetic resonance imaging, computerized axial tomography scans, and ultrasound services";

(C) in subsection (h)(1)—

(i) by striking "; REMUNERATION.—(A)" and inserting ".—",

(ii) in subparagraph (A), by striking "any remuneration" and all that follows and inserting "any payment (whether directly or indirectly, overtly or covertly, in cash or in kind) made by an entity to a physician (or immediate family member).", and

(iii) by striking subparagraph (B); and

(D) in subsection (a)(2)(B), by striking "subsection (h)(1)(A)" and inserting "subsection (h)(1)".

(8) Section 2355(b)(1)(B) of the Deficit Reduction Act of 1984, as amended by section 4207(b)(4)(B)(ii) of OBRA-1990, is amended—

(A) by striking "12907(c)(4)(A)" and inserting "4207(b)(4)(B)(i)", and

(B) by striking "feasibilitly" and inserting "feasibility".

(9) Section 4207(b)(4)(B)(iii)(III) of OBRA-1990 is amended by striking the period at the end and inserting a semicolon.

(10) Subsections (c)(3) and (e) of section 2355 of the Deficit Reduction Act of 1984, as amended by section 4207(b)(4)(B) of OBRA-1990, are each amended by striking "12907(c)(4)(A)" each place it appears and inserting "4207(b)(4)(B)".

(11) Section 4207(c)(2) of OBRA-1990 is amended by striking "the Committee on Ways and Means" each place it appears and inserting "the Committees on Ways and Means and Energy and Commerce".

(12) Section 4207(d) of OBRA-1990 is amended by redesignating the second paragraph (3) (relating to effective date) as paragraph (4).

(13) Section 4207(i)(2) of OBRA-1990 is amended—

(A) by striking the period at the end of clause (iii) and inserting a semicolon, and

(B) in clause (v), by striking "residents" and inserting "patients".

(14) Section 4207(j) of OBRA-1990 is amended by striking "title" each place it appears and inserting "subtitle".

Subtitle D—Medicare Supplemental Insurance Policies

SEC. 231. CORRECTIONS RELATING TO MEDICARE SUPPLEMENTAL INSURANCE POLICIES (SECTIONS 4351 THROUGH 4361 OF OBRA-1990).

(a) SIMPLIFICATION OF MEDICARE SUPPLEMENTAL POLICIES (SECTION 4351 OF OBRA-1990).—

(1) Section 4351 of OBRA-1990 is amended by striking "(a) IN GENERAL.—".

(2) Section 1882(p) of the Social Security Act, as added by section 4351 of OBRA-1990, is amended—

(A) in paragraph (1)(A)—

(i) by striking "promulgates" and inserting "changes the revised NAIC Model Regulation (described in subsection (m)) to incorporate",

(ii) by striking "(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards')", and

(iii) by striking "included a reference to the NAIC standards" and inserting "were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the '1991 NAIC Model Regulation')";

(B) in paragraph (1)(B)—

(i) by striking "promulgate NAIC standards" and inserting "make the changes in the revised NAIC Model Regulation",

(ii) by striking "limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards')" and inserting "a regulation", and

(iii) by striking "included a reference to the Federal standards" and inserting "were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the '1991 Federal Regulation')";

(C) in paragraph (1)(C)(i), by striking "NAIC standards or the Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation";

(D) in paragraphs (1)(C)(ii)(I), (1)(E), (2), and (9)(B), by striking "NAIC or Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation";

(E) in paragraph (2)(C), by striking "(5)(B)" and inserting "(4)(B)";

(F) in paragraph (4)(A)(i), by inserting "or paragraph (6)" after "(B)";

(G) in paragraph (4), by striking "applicable standards" each place it appears and inserting "applicable 1991 NAIC Model Regulation or 1991 Federal Regulation";

(H) in paragraph (6), by striking "in regard to the limitation of benefits described in paragraph (4)" and inserting "described in clauses (i) through (iii) of paragraph (1)(A)";

(I) in paragraph (7), by striking "policyholder" and inserting "policyholders";

(J) in paragraph (8), by striking "after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection" and inserting "on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (o) or (q) or clause (i), (ii), or (iii) of paragraph (1)(A)";

(K) in paragraph (9), by adding at the end the following new subparagraph:

"(D) Subject to paragraph (10), this paragraph shall apply to sales of policies occurring on or after the effective date specified in paragraph (1)(C)."; and

(L) in paragraph (10), by striking "this subsection" and inserting "paragraph (1)(A)(i)".

(3) The Secretary of Health and Human Services shall publish in the Federal Register a list described in section 1882(p)(10) of the Social Security Act by no later than December 31, 1991.

(4) For purposes of section 1882 of the Social Security Act, when the National Association of Insurance Commissioners modifies its 1991 NAIC Model Regulation (adopted in July 1991) to delete from section 15C the exception which begins with "unless", such modification shall be considered to be part of that Regulation under such section. If subsection (p)(1)(A) of such section is applicable, until the Association makes such modification, such section shall be applied as if such exception had been deleted. Any 1991 Federal Regulation adopted under such section shall not include such exception. If the Secretary of Health and Human Services identifies a State as requiring legislative action in order to conform its regulatory program to the modification described in this paragraph, the State regulatory program shall not be considered to be out of compliance with the requirements of such section due solely to failure to make such modification until the close of the first regular legislative session that begins after the date of the enactment of this Act.

(b) GUARANTEED RENEWABILITY (SECTION 4352 OF OBRA-1990).—Section 1882(q) of the Social Security Act, as added by section 4352 of OBRA-1990, is amended—

(1) in paragraph (2), by striking "paragraph (2)" and inserting "paragraph (4)", and

(2) in paragraph (4), by striking "the succeeding issuer" and inserting "issuer of the replacement policy".

(c) ENFORCEMENT OF STANDARDS (SECTION 4353 OF OBRA-1990).—

(1) Section 1882(a)(2) of the Social Security Act, as added by section 4353(a)(2)(B) of OBRA-1990, is amended—

(A) in subparagraph (A), by striking "NAIC standards or the Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation", and

(B) by striking "after the effective date of the NAIC or Federal standards with respect to the policy" and inserting "on and after the effective date specified in subsection (p)(1)(C)".

(2) The sentence in section 1882(b)(1) of the Social Security Act added by section 4353(c)(5) of OBRA-1990 is amended—

(A) by striking "The report" and inserting "Each report",

(B) by inserting "and requirements" after "standards",

(C) by striking "and" after "compliance,", and

(D) by striking the comma after "Commissioners".

(3) Section 1882(g)(2)(B) of the Social Security Act is amended by striking "Panel" and inserting "Secretary".

(4) Section 1882(b)(1) of such Act is amended by striking "the the Secretary" and inserting "the Secretary".

(d) PREVENTING DUPLICATION (SECTION 4354 OF OBRA-1990).—

(1) Section 1882(d)(3)(A) of the Social Security Act, as amended by section 4354(a)(1) of OBRA-1990, is amended—

(A) by inserting before the first sentence the following:

"(i) Effective before January 1, 1994, it is unlawful for a person to sell or issue to an individual entitled to benefits under part A or enrolled under part B of this title—

"(I) a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under this title or title XIX,

"(II) a medicare supplemental policy with knowledge that the individual is entitled to benefits under another medicare supplemental policy, or

"(III) a health insurance policy (other than a medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law.";

(B) by designating the current first sentence as clause (ii) and, in such clause, by striking "It is unlawful" and inserting "Effective January 1, 1994, it is unlawful";

(C) by designating the current second sentence as clause (iii) and, in such clause, by striking "the previous sentence" and inserting "clause (i) or (ii)";

(D) by designating the current third sentence as clause (iv) and, in such clause—

(i) by striking "the previous sentence" and inserting "clause (i) or (ii) with respect to the sale of a medicare supplemental policy", and

(ii) by striking "the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled" and inserting "the individual is not entitled to benefits under another medicare supplemental policy"; and

(E) by striking the last sentence.

(2) Section 1882(d)(3)(B) of the Social Security Act, as amended by section 4354(a)(2) of OBRA-1990, is amended—

(A) in clause (i)(I), by striking "clause (II)" and inserting "clause (ii)",

(B) in clause (ii)(II), by striking "65 years of age or older",

(C) in clause (iii)(I), by striking "another medicare" and inserting "a medicare",

(D) in clause (iii)(I), by striking "such a policy" and inserting "a medicare supplemental policy",

(E) in clause (iii)(II), by striking "another policy" and inserting "a medicare supplemental policy", and

(F) by amending subclause (III) of clause (iii) to read as follows:

"(III) If the statement required by clause (i) is obtained and indicates that the individual is entitled to any medical assistance under title XIX, the sale of the policy is not in violation of clause (i) (insofar as such clause relates to such medical assistance), if a State medicaid plan under such title pays the premiums for the policy, or, in the case of a qualified medicare beneficiary described in section 1905(p)(1), if the State pays less than the individual's full liability for medicare cost-sharing (as defined in section 1905(p)(3)).".

(3)(A) Section 1882(d)(3)(C) of the Social Security Act is amended—

(i) by striking "the selling" and inserting "(i) the sale or issuance", and

(ii) by inserting before the period at the end the following: ", (ii) the sale or issuance before January 1, 1994, of a policy or plan described in subparagraph (A)(i)(I) (other than a medicare supplemental policy to an individual entitled to any medical assistance under title XIX) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual but only if there is disclosed in a prominent manner as part of the application a statement of the extent to which benefits payable under the policy or plan duplicate benefits under this title, or (iii) the sale or issuance before January 1, 1994, of a policy or plan described in subparagraph (A)(i)(III) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual".

(B) The requirement of a disclosure under section 1882(d)(3)(C)(ii) of the Social Security Act shall not apply to an application made for a policy or plan before 90 days after the date of the enactment of this Act.

(4) Subparagraphs (A) and (B) of section 1882(q)(5)(A) of the Social Security Act, as added by section 4354(b) of OBRA-1990, is amended by striking "of the Social Security Act".

(5) The second subsection (b) of section 4354 of OBRA-1990 (relating to effective date) is amended by redesignating such subsection as subsection (c).

(e) LOSS RATIOS AND REFUNDS OF PREMIUMS (SECTION 4355 OF OBRA-1990).—

(1) Section 1882(r) of the Social Security Act, as added by section 4355(a)(3) of OBRA-1990, is amended—

(A) in paragraph (1), by striking "or sold" and inserting "or renewed";

(B) in paragraph (1)(A), by inserting "for periods after the effective date of these provisions" after "the policy can be expected";

(C) in paragraph (1)(A), by striking "Commissioners," and inserting "Commissioners)";

(D) in paragraph (1)(B), by inserting before the period at the end the following: ", treating policies of the same type as a single policy for each standard package";

(E) by adding at the end of paragraph (1) the following: "For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C), the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all policies issued by an insurer in a State and shall be based only on aggregate benefits provided and premiums collected under the policies after such date.";

(F) in the first sentence of paragraph (2)(A), by striking "by policy number" and inserting "by standard package";

(G) by striking the second sentence of paragraph (2)(A) and inserting the following: "Paragraph (1)(B) shall not apply to a policy until 12 months following issue. In the case of a policy issued before the date specified in subsection (p)(1)(C), paragraph (1)(B) shall not apply until 12 months following such date.";

(H) in the last sentence of paragraph (2)(A), by striking "in order" and all that follows through "are effective";

(I) in paragraph (2), by striking "policy year" each place it appears and inserting "calendar year";

(J) in paragraph (4), by striking "disllowance", "loss-ratios", and "loss-ratio" and inserting "disallowance", "loss ratios", and "loss ratio", respectively;

(K) in paragraph (6)(A), by striking "issues a policy in violation of the loss ratio requirements of this subsection" and "such violation" and inserting "fails to provide refunds or credits as required in paragraph (1)(B)" and "policy issued for which such failure occurred", respectively; and

(L) in paragraph (6)(B), by striking "to policyholders" and inserting "to the policyholder or, in the case of a group policy, to the certificate holder".

(2) Section 1882(b)(1) of the Social Security Act is amended by transferring and inserting the subparagraph (G) added by section 4355(c)(3) of OBRA-1990 immediately after the subparagraph (F) added by section 4353(c)(3) of that Act.

(3) Section 4355(d) of OBRA-1990 is amended by striking "sold or issued" and all that follows and inserting "issued or renewed on or after the date specified in section 1882(p)(1)(C) of the Social Security Act.".

(f) Treatment of HMO's (Section 4356 of OBRA-1990).—

(1) Section 1882(g)(1) of the Social Security Act, as amended by section 4356(a) of OBRA-1990, is amended by striking "a health maintenance organization or other direct service organization" and all that follows through "1833" and inserting "an eligible organization (as defined in section 1876(b)) if the policy or plan provides benefits pursuant to a contract under section 1876 or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 or, during the 1-year period beginning on the date specified in subsection (p)(1)(C), a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1833(a)(1)(A)".

(2) Section 4356(b) of OBRA-1990 is amended by striking "on the date of the enactment of this Act" and inserting "on the date specified in section 1882(p)(1)(C) of the Social Security Act".

(g) Pre-existing Condition Limitations (Section 4357 of OBRA-1990).—Section 1882(s) of the Social Security Act, as added by section 4357(a)(2) of OBRA-1990, is amended—

(1) in paragraph (2)(A), by striking "for which an application is submitted" and inserting "in the case of an individual for whom an application is submitted prior to or", and

(2) in paragraph (2)(B), by striking "before it" and inserting "before the policy".

(h) Medicare Select Policies (Section 4358 of OBRA-1990).—

(1) Section 1882(t) of the Social Security Act, as added by section 4358(a) of OBRA-1990, is amended—

(A) in paragraph (1), by inserting "medicare supplemental" after "If a",

(B) in paragraph (1), by striking "NAIC Model Standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation",

(C) in paragraph (1)(A), by inserting "or agreements" after "contracts",

(D) in subparagraphs (E)(i) and (F) of paragraph (1), by striking "NAIC standards" and inserting "standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation", and

(E) in paragraph (2), by inserting "the issuer" before "is subject to a civil money penalty".

(2) Section 1154(a)(4)(B) of the Social Security Act, as amended by section 4358(b)(3) of OBRA-1990, is amended—

(A) by inserting "that is" after "(or", and

(B) by striking "1882(t)" and inserting "1882(t)(3)".

(i) Health Insurance Counseling (Section 4360 of OBRA-1990).—Section 4360 of OBRA-1990 is amended—

(1) in subsection (b)(2)(A)(ii), by striking "Act" and inserting "Act)";

(2) in subsection (b)(2)(D), by striking "services" and inserting "counseling";

(3) in subsection (b)(2)(I), by striking "assistance" and inserting "referrals";

(4) in subsection (c)(1), by striking "and that such activities will continue to be maintained at such level";

(5) in subsection (d)(3), by striking "to the rural areas" and inserting "eligible individuals residing in rural areas";

(6) in subsection (e)—

(A) by striking "subsection (c) or (d)" and inserting "this section",

(B) by striking "and annually thereafter, issue an annual report" and inserting "and annually thereafter during the period of the grant, issue a report",

(C) in paragraph (1), by striking "State-wide", and

(D) in subsection (f), by striking paragraph (2) and by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(7) by redesignating the second subsection (f) (relating to authorization of appropriations for grants) as subsection (g).

(j) Telephone Information System (Section 4361 of OBRA-1990).—

(1) Section 1804 of the Social Security Act is amended—

(A) by adding at the end of the heading the following: "; MEDICARE AND MEDIGAP INFORMATION",

(B) by inserting "(a)" after "1804.", and

(C) by adding at the end the following new subsection:

"(b) The Secretary shall provide information via a toll-free telephone number on the programs under this title.".

(2) Section 1882(f) of the Social Security Act is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide information via a toll-free telephone number on medicare supplemental policies (including the relationship of State programs under title XIX to such policies).".

(3) Section 1889 of the Social Security Act, as inserted by section 4361(a) of OBRA-1990, is repealed.

TITLE III—CORRECTIONS RELATING TO SOCIAL SECURITY, INCOME SECURITY AND HUMAN RESOURCES, AND TARIFF AND CUSTOMS

Subtitle A—Social Security

SEC. 301. TECHNICAL CORRECTIONS RELATED TO OASDI IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990.

(a) Amendments Related to Provisions in Section 5103(b) Relating to Disabled Widows.—Section 223(f)(2) of the Social Security Act (42 U.S.C. 423(f)(2)) is amended—

(1) in subparagraph (A), by striking "(in a case to which clause (ii)(II) does not apply)"; and

(2) by striking subparagraph (B)(ii) and inserting the following:

"(ii) the individual is now able to engage in substantial gainful activity; or".

(b) Amendments Related to Provisions in Section 5105(d) Relating to Representative Payees.—Section 5105(d)(1)(A) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended—

(1) by striking "Section 205(j)(5)" and inserting "Section 205(j)(6)"; and

(2) by redesignating the paragraph (5) as amended thereby as paragraph (6).

(c) Amendments Related to Provisions in Section 5106 Relating to Coordination of Rules under Titles II and XVI Governing Fees for Representatives of Claimants with Entitlements under Both Titles.—

(1) Calculation of fee of claimant's representative based on amount of past-due supplemental security income benefits after application of windfall offset provision.—Section 1631(d)(2)(A)(i) of the Social Security Act (as amended by section 5106(a)(2) of the Omnibus Budget Reconciliation Act of 1990) (42 U.S.C. 1383(d)(2)(A)(i)) is amended to read as follows:

"(i) by substituting, in subparagraphs (A)(ii)(I) and (C)(i), the phrase '(determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a))' for the parenthetical phrase contained therein; and".

(2) Calculation of past-due benefits for purposes of determining attorney fees in judicial proceedings.—

(A) In general.—Section 206(b)(1) of such Act (42 U.S.C. 406(b)(1)) is amended—

(i) by inserting "(A)" after "(b)(1)"; and

(ii) by adding at the end the following new subparagraph:

"(B) For purposes of this paragraph—

"(i) the term 'past-due benefits' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 223, and

"(ii) amounts of past-due benefits shall be taken into account to the extent provided under the rules applicable in cases before the Secretary.".

(B) PROTECTION FROM OFFSETTING SSI BENEFITS.—The last sentence of section 1127(a) of such Act (as added by section 5106(b) of the Omnibus Budget Reconciliation Act of 1990) (42 U.S.C. 1320a–6(a)) is amended by striking "section 206(a)(4)" and inserting "subsection (a)(4) or (b) of section 206".

(3) APPLICATION OF SINGLE DOLLAR AMOUNT CEILING TO CONCURRENT CLAIMS UNDER TITLES II AND XVI.—

(A) IN GENERAL.—Section 206(a)(2) of such Act (as amended by section 5106(a)(1) of the Omnibus Budget Reconciliation Act of 1990) (42 U.S.C. 406(a)(2)) is amended—

(i) by redesignating subparagraph (C) as subparagraph (D); and

(ii) by inserting after subparagraph (B) the following new subparagraph:

"(C) In any case involving—

"(i) an agreement or agreements described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this title and a claim of entitlement to past-due benefits under title XVI, and

"(ii) a favorable determination made by the Secretary with respect to both such claims,

the Secretary may approve such agreement or agreements only if the total fee or fees specified in such agreement or agreements do not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).".

(B) CONFORMING AMENDMENT.—Section 206(a)(3)(A) of such Act (as amended by section 5106(a)(1) of the Omnibus Budget Reconciliation Act of 1990) (42 U.S.C. 406(a)(3)(A)) is amended by striking "paragraph (2)(C)" and inserting "paragraph (2)(D)".

(d) AMENDMENT RELATED TO PROVISIONS IN SECTION 5115 RELATING TO ADVANCE TAX TRANSFERS.—Section 201(a) of the Social Security Act (42 U.S.C. 401(a)) is amended in the last sentence by striking "and" the second place it appears.

(e) EFFECTIVE DATE.—Each amendment made by this section shall take effect as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990 to which such amendment relates.

Subtitle B—Income Security and Human Resources

SEC. 311. REPEAL OF PROVISION INADVERTENTLY INCLUDED IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990.

Section 5057 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), and the amendment made by such section, are hereby repealed, and section 1139(d) of the Social Security Act shall be applied and administered as if such section 5057 had never been enacted.

SEC. 312. CORRECTIONS RELATED TO THE INCOME SECURITY AND HUMAN RESOURCES PROVISIONS OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990.

(a) AMENDMENT RELATED TO SECTION 5035(a)(2).—Section 5035(a)(2) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) is amended by striking "a semicolon" and inserting " '; and' ".

(b) AMENDMENTS RELATED TO SECTION 5105(d)(1)(b).—Section 5105(d)(1)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) is amended—

(1) by striking "Section 1631(a)(2)(E)" and inserting "Section 1631(a)(2)(F)"; and

(2) by redesignating the subparagraph (E) as amended thereby as subparagraph (F).

(c) AMENDMENT RELATED TO SECTION 5105(a)(1)(b).—The second paragraph of section 1631(a) of the Social Security Act (42 U.S.C. 1383(a)) is amended by striking "(A)(i) Payments" and inserting "(2)(A)(i) Payments".

(d) AMENDMENTS RELATED TO SECTION 5105(b).—Section 1631(a)(2)(C) of the Social Security Act (42 U.S.C. 1383(a)(2)(C)) is amended—

(1) by striking clause (ii);

(2) by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively; and

(3) in clause (iv) (as so redesignated), by striking "(iii), and (iv)" and inserting "and (iii)".

(e) Amendments Related to Section 5107(a)(2)(b).—Section 1631(c)(1)(B) of the Social Security Act (42 U.S.C. 1383(c)(1)(B)) is amended by striking “paragraph (1)” each place such term appears and inserting “subparagraph (A)”.

(f) Amendment Related to Section 5109(a)(2).—Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by redesignating the subsection (n) added by section 5109(a)(2) of the Omnibus Budget Reconciliation Act of 1990, as subsection (o).

(g) Amendments Related to Section 11115(b)(2).—Section 11115(b)(2) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended—

(1) in subparagraph (A), by striking “paragraph (8)” and inserting “paragraph (9)”;

(2) in subparagraph (B), by striking “paragraph (9)” and inserting “paragraph (10)”; and

(3) in subparagraph (C), by redesignating the new paragraph added thereby as paragraph (11).

(h) Effective Date.—Each amendment made by this section shall take effect as if included in the provision of the Omnibus Budget Reconciliation Act of 1990 to which the amendment relates at the time such provision became law.

SEC. 313. CORRECTION RELATED TO SECTION 8006 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1989.

(a) Correction.—Section 473(a)(6)(B) of the Social Security Act (42 U.S.C. 673(a)(6)(B)) is amended by striking “474(a)(3)(B)” and inserting “474(a)(3)(C)”.

(b) Effective Date.—The amendment made by subsection (a) of this section shall take effect as if included in section 8006 of the Omnibus Budget Reconciliation Act of 1989 at the time such section 8006 became law.

SEC. 314. AMENDMENT RELATED TO SECTION 13101(d)(2) OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990.

(a) In General.—Section 256(k)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking “—” the second place it appears and all that follows through “(I)”; and

(2) by striking “; or” and all that follows through “(II)” and inserting “, except that a State may not be allotted an amount under this subparagraph that exceeds”.

(b) Effective Date.—The amendments made by subsection (a) of this section shall take effect as if included in section 13101(d)(2) of the Omnibus Budget Reconciliation Act of 1990 at the time such section 13101(d)(2) became law.

Subtitle C—Tariff and Customs

SEC. 321. TECHNICAL AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES.

(a) In General.—The Harmonized Tariff Schedule of the United States is amended as follows:

(1) Removal of GDR from column 2 rate list.—General Note 3(b) is amended by striking “German Democratic Republic”.

(2) Tapestry and upholstery fabrics.—The article description for subheading 5112.19.20 is amended by striking “of a weight exceeding 300 g/m^2”.

(3) Gloves.—

(A) Chapter 61 is amended by redesignating subheading 6116.10.45 as subheading 6116.10.48.

(B) Chapter 62 is amended by striking the superior text “Other:” that appears between subheadings 6216.00.46 and 6216.00.52.

(4) Agglomerate stone floor and wall tiles.—The article description for subheading 6810.19.12 is amended to read as follows: “Of stone agglomerated with binders other than cement”.

(5) 2,4-Diaminobenzenesulfonic acid.—The article description for heading 9902.30.43 is amended by striking “2921.51.50” and inserting “2921.59.50”.

(6) Machines used in the manufacture of bicycle parts.—The article description for heading 9902.84.79 is amended by striking “8479.89.90” and inserting “8462.49.00, 8479.89.90 or 9031.80.00”.

(7) Copying machines and parts.—The article description for heading 9902.90.90 is amended by inserting “or 8473.40.40” after “8472.90.80”.

(b) Staged Rate Reductions for Gloves.—Any staged reduction of a special rate of duty set forth in subheading 6116.10.45 of such Schedule that takes effect on or after October 1, 1990, by reason of section 10011(a)(2) of Omnibus Budget Reconciliation Act of 1990 shall apply to the corresponding rate of duty in subheading 6116.10.48 (as redesignated by subsection (a)(3)(A)).

(c) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by subsection (a) shall apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(2) Retroactive application for certain liquidations and reliquidations.—

(A) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer on or before the 90th day after the date of the enactment of this Act, any entry—

(i) that was made after the applicable date and before the 15th day after such date of enactment; and

(ii) with respect to which there would have been a lesser or no duty if any amendment made by subsection (a) applied to such entry;

shall be liquidated or reliquidated as though such amendment applied to such entry.

(B) For purposes of this subsection, the term "applicable date" means—

(i) if such amendment is made by subsection (a)(4) or (a)(7), December 31, 1988; and

(ii) if such amendment is made by subsection (a)(2), (a)(3), (a)(5), (a)(6), September 30, 1990.

SEC. 322. CLARIFICATION REGARDING THE APPLICATION OF CUSTOMS USER FEES.

(a) In General.—Subparagraph (D) of section 13031(b)(8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)(D)) is amended—

(1) by striking out "and" at the end of clause (iv);

(2) by striking out the period at the end of clause (v) and inserting "; and"; and

(3) by inserting after clause (v) the following new clause:

"(vi) in the case of merchandise entered from a foreign trade zone (other than merchandise to which clause (v) applies), be applied only to the value of the merchandise subject to duty under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c)."

(b) Effective Date.—The amendments made by subsection (a) apply to—

(1) any entry made from a foreign trade zone on or after the 15th day after the date of the enactment of this Act; and

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if the entry was not liquidated before such 15th day.

SEC. 323. TECHNICAL AMENDMENTS TO THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988.

(a) In General.—Paragraph (2) of section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902(a)(2)) is amended—

(1) in subparagraph (A)—

(A) by striking "the date of enactment of this Act" and inserting "January 1, 1989"; and

(B) by striking "such date of enactment" and inserting "January 1, 1989"; and

(2) in subparagraph (B), by striking "such date of enactment" and inserting "January 1, 1989".

(b) Effective Date.—The amendments made by subsection (a) shall take effect January 1, 1989.

(c) Construction.—For purposes of applying the amendments made by subsection (a), the column 1-general rate of duty established by any amendment to the Harmonized Tariff Schedule of the United States that was enacted after January 1, 1989, shall, if—

(1) such amendment has, or is statutorily treated as having, an effective date of January 1, 1989; or

(2) application for liquidation or reliquidation at such rate with respect to entries made after December 31, 1988, and before the effective date of the amendment, is provided for;

be treated as the rate in effect on January 1, 1989.

SEC. 324. TECHNICAL AMENDMENT TO THE CUSTOMS AND TRADE ACT OF 1990.

Subsection (b) of section 484H of the Customs and Trade Act of 1990 (19 U.S.C. 1553 note) is amended by striking ", or withdrawn from warehouse for consumption," and inserting "for transportation in bond".

LEGISLATIVE BACKGROUND

H.R. 1555 was introduced on March 21, 1991, as the Technical Corrections Act of 1991. As introduced, the bill contained three titles: Title I—technical corrections to revenue provisions; Title II—miscellaneous and technical corrections to medicare provisions; and Title III—technical corrections relating to social security, income security and human resources, and tariff and customs provisions.

Hearings on H.R. 1555 were held on July 23 and 24, 1991. The committee met on November 25, 1991, and added additional technical corrections to Titles I, II, and III.

The amendments made by Title I of the Technical Corrections Act of 1991 are intended to correct, clarify, or conform various recently enacted tax provisions. Provisions in the bill are generally effective as if included in the original legislation, unless otherwise specified. Provisions in the bill for which no descriptions are provided are clerical in nature.

TITLE I—TAX TECHNICAL CORRECTIONS

I. Technical Corrections to the Revenue Reconciliation Act of 1990

A. INDIVIDUAL INCOME TAX PROVISIONS

1. Minimum tax rate on certain nonresident aliens (sec. 102(a)(2) of the bill, sec. 11102 of the 1990 Act, and sec. 897 of the Code)

Present law

The Revenue Reconciliation Act of 1990 (the "1990 Act") increased the alternative minimum tax rate on individuals from 21 percent to 24 percent.

Explanation of provision

The bill conforms the rate of the minimum tax on the U.S. real property gains of nonresident aliens to the 24 percent minimum tax rate enacted in the 1990 Act.

2. Tax rate of personal holding companies (sec. 102(a)(4) of the bill, sec. 11101 of the 1990 Act, and sec. 541 of the Code)

Present law

A corporation that is treated as a personal holding company is subject, in addition to the regular corporate tax, to a 28-percent tax on its undistributed personal holding company income for the taxable year. The present-law rate of 28 percent was set by the Tax Reform Act of 1986.[1] This rate reflected the maximum rate of tax on individuals in that Act.

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[1] See P.L. 99-514, sec. 104(b)(8).

The 1990 Act increased the maximum rate of tax on individuals from 28 percent to 31 percent effective for taxable years beginning after December 31, 1990.

Explanation of provision

The bill provides that the increase in the individual maximum tax rate to 31 percent also applies to the personal holding company tax rate, effective for taxable years beginning after December 31, 1990.

3. Definition of AGI for the earned income tax credit and the supplemental earned income tax credit for health insurance premiums (sec. 102(a)(5) of the bill, sec. 11111 of the 1990 Act, and sec. 32 of the Code)

Present law

Under present law, a supplemental earned income tax credit (EITC) is available to certain taxpayers for qualified health insurance expenses. Qualified health insurance expenses for which the credit is available are amounts paid during the taxable year for health insurance coverage that includes one or more qualifying children. These expenses include only those expenses relating to the cost of coverage (i.e., premium cost) paid with after-tax dollars. The maximum credit is $428 in 1991. The credit is phased out as adjusted gross income (AGI) (or earned income, if greater) exceeds $11,250 in 1991. Earned income amounts taken into account in computing the maximum credit and the beginning point of the phase-out range are indexed for inflation.

The calculation of this supplemental child health insurance credit is generally the same as the calculation of the basic EITC. Thus, the same eligibility criteria and income phase-in and phase-out requirements apply. There is no family size adjustment with respect to the health insurance credit.

Present law provides that the amount of expenses taken into account in determining the deduction for health insurance costs of self-employed individuals (sec. 162(1)) is reduced by the amount (if any) of the supplemental child health insurance credit allowable to the taxpayer (sec. 162(1)(3)(B)). This so-called "double-dip" provision creates a calculation problem because the amount of the EITC, the supplemental young child credit, and the child health insurance credit cannot be determined until AGI is determined; however, AGI is determined with reference to the deduction for health insurance costs of self-employed individuals. Thus, the operation of the double-dip provision creates a circularity that increases the complexity of the child health credit.

Explanation of provision

Under the bill, for purposes of the EITC, the supplemental young child credit, and the supplemental child health insurance credit, AGI is calculated assuming that the taxpayer is entitled to the full deduction for health insurance costs under section 162(1). Then, after the maximum child health credit is determined, the double-dip rule (sec. 162(1)(3)(B)) operates as it does under present law.

B. EXCISE TAX PROVISIONS

1. Application of the 2.5-cents-per-gallon tax on fuel used in rail transportation to States and local governments (sec. 102(b)(3) of the bill, sec. 11211(b)(4) of the 1990 Act, and sec. 4093 of the Code)

Present law

The 1990 Act increased the highway and motorboat fuels taxes by 5 cents per gallon, effective on December 1, 1990. The 1990 Act continued the exemption from these taxes for fuels used by States and local governments.

The 1990 Act also imposed a 2.5-cents-per-gallon tax on fuel used in rail transportation, also effective on December 1, 1990. Because of a drafting error in the 1990 Act, the 2.5-cents-per-gallon tax on fuel used in rail transportation incorrectly applies to States and local governments.

Explanation of provision

The bill clarifies that the 2.5-cents-per-gallon tax on fuel used in rail transportation does not apply to such uses by States and local governments.

2. Deposit of certain aviation tax revenues in Airport and Airway Trust Fund (sec. 102(b)(5) of the bill, sec. 11213 of the 1990 Act, and sec. 9502(e)(1) of the Code)

Present law

The 1990 Act increased the aviation excise tax rates (except for the international air departure tax rate) by 25 percent, and extended those taxes for five years, effective December 1, 1990, through December 31, 1995. From December 1, 1990 through 1992, the statement of managers on the 1990 Act indicated that the revenues attributable to the *increased* portion of the aviation taxes were to be retained in the General Fund; these revenues will be deposited in the Airport and Airway Trust Fund for 1993 through 1995. The statute as enacted in the 1990 Act omitted this agreement with respect to the taxes other than those imposed on aviation fuels (i.e., the revenues attributable to the *increase* in the air passenger ticket tax and the air cargo tax).

Explanation of provision

The bill clarifies that revenues from all aviation excise taxes attributable to the *increased* rates imposed by the 1990 Act on taxable events during periods before January 1, 1993, will be retained in the General Fund. The amendment does not affect revenues attributable to the tax rates imposed before enactment of the 1990 Act and extended by that Act.

3. Small winery production credit and bonding requirements (secs. 102(b)(7), (8), and (9) of the bill, sec. 11201 of the 1990 Act, and sec. 5041 of the Code)

Present law

A 90-cents-per-gallon credit is allowed to wine producers who produce no more than 250,000 gallons of wine in a year. The credit may be claimed against the producers' excise or income taxes.

Wine producers must post a bond in amounts determined by reference to expected excise tax liability as a condition of legally operating.

Explanation of provision

The bill clarifies that wine produced by eligible small wineries may be transferred without payment of tax to bonded warehouses that become liable for payment of the wine excise tax without losing credit eligibility. In such cases, the bonded warehouse will be eligible for the credit to the same extent as the producer otherwise would have been.

The bill further clarifies that the Treasury Department has broad regulatory authority to prevent the benefit of the credit from accruing (directly or indirectly) to wineries producing in excess of 250,000 gallons in a calendar year. The committee specifically understands that this authority extends to all circumstances in which wine production is increased with a purpose of securing indirect credit eligibility for wine produced by such large producers.

The bill also clarifies that the Treasury Department may take the amount of credit expected to be claimed against a producer's wine excise tax liability into account in determining the amount of required bond.

4. Floor stocks refunds for certain cigarette taxes (sec. 102(b)(10) of the bill and 11202 of the 1990 Act)

Present law

A floor stocks tax, equal to the amount of the rate increase, is imposed when the rates of Federal excise taxes (other than retail taxes) are increased. The cigarette excise tax rates are scheduled to increase on January 1, 1993. Refunds of this tax, as with the underlying excise tax, are permitted in certain cases.

Explanation of provision

The bill clarifies that the Treasury Department may make refunds of the cigarette floor stocks tax to be imposed on January 1, 1993, to manufacturers rather than to the persons that actually pay the tax, if the manufacturers demonstrate that the benefit of the refund accrues to the person actually paying the tax.

C. OTHER REVENUE-INCREASE PROVISIONS OF THE 1990 ACT

1. Deposits of Railroad Retirement Tax Act taxes (sec. 102(c)(3) of the bill, sec. 11334 of the 1990 Act, and sec. 6302(g) of the Code)

Present law

Employers must deposit income taxes withheld from employees' wages and FICA taxes that are equal to or greater than $100,000 by the close of the next banking day. Under the Railroad Retirement Solvency Act of 1983, the deposit rules for withheld income taxes and FICA taxes automatically apply to Railroad Retirement Tax Act taxes (sec. 226 of P.L. 98-76).

Explanation of provision

The bill conforms the Internal Revenue Code to the Railroad Retirement Solvency Act of 1983 by stating in the code that these deposit rules for withheld income taxes and FICA taxes apply to Railroad Retirement Tax Act taxes.

2. Treatment of salvage and subrogation of property and casualty insurance compliance (sec. 102(c)(4) of the bill and sec. 11305 of the 1990 Act)

Present law

For taxable years beginning after December 31, 1989, property and casualty insurance companies are required to reduce the deduction allowed for losses incurred (both paid and unpaid) by estimated recoveries of salvage and subrogation attributable to such losses. In the case of any property and casualty insurance company that took into account estimated salvage and subrogation recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of the estimated salvage and subrogation recoverable as of the close of the last taxable year beginning before January 1, 1990, is allowed as a deduction ratably over the first 4 taxable years beginning after December 31, 1989. This special deduction was enacted in order to provide such property and casualty insurance companies with substantially the same Federal income tax treatment as that provided to those property and casualty insurance companies that prior to the Revenue Reconciliation Act of 1990 did not take into account estimated salvage and subrogation recoverable in determining losses incurred.

Explanation of provision

The bill provides that the earnings and profits of any property and casualty insurance company that took into account estimated salvage and subrogation recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, is to be determined without regard to the special deduction that is allowed over the first 4 taxable years beginning after December 31, 1989. The special deduction is to be taken into account, however, in determining earnings and profits for purposes of applying sections 56, 902, 952(c)(1) and 960 of the Internal Revenue Code of 1986. This provision is considered necessary in order to provide those property and casualty insurance companies that took into account estimated salvage and subrogation recoverable in determining losses incurred with substantially the same Federal income tax treatment as that provided to those property and casualty insurance companies that prior to the 1990 Act did not take into account estimated salvage and subrogation recoverable in determining losses incurred.

3. Information with respect to certain foreign-owned or foreign corporations: Suspension of the statute of limitations during certain judicial proceedings (sec. 102(c)(5) of the bill, secs. 11314 and 11315 of the 1990 Act, and secs. 6038A and 6038C of the Code)

Present law

Any domestic corporation that is 25-percent owned by one fireign person is subject to certain information reporting and recordkeeping requirements with respect to transactions carried out directly or indirectly with certain foreign persons treated as related to the domestic corporation ("reportable transactions") (sec. 6038A(a)). In addition, the Code provides procedures whereby an IRS examination request or summons with respect to reportable transactions can be served on foreign related persons through the domestic corporation (sec. 6038A(e)). Similar provisions apply to any foreign corporation engaged in a trade or business within the United States, with respect to information, records, examination requests, and summonses pertaining to the computation of its liability for tax in the United States (sec. 6038C). Certain noncompliance rules may be applied by the Internal Revenue Service in the case of the failure by a domestic corporation to comply with a summons pertaining to a reportable transaction (a "6038A summons") (sec. 6038A(e)), or the failure by a foreign corporation engaged in a U.S. trade or business to comply with a summons issued for purposes of determining the foreign corporation's liability for tax in the Untied States (a "6038C summons") (sec. 6038C(d)).

Any corporation that is subject to the provisions of section 6038A or 6038C has the right to petition a Federal district court to quash a 6038A or 6038C summons, or to review a determination by the IRS that the corporation did not substantially comply in a timely manner with the 6038A or 6038C summons (sec. 6038A(e)(4)(A) and (B); sec. 6038C(d)(4)). During the period that either such judicial proceeding is pending (including appeals), and for up to 90 days thereafter, the statute of limitations is suspended with respect to any transaction (or item, in the case of a foreign corporation) to which the summons relates (secs. 6038A(e)(4)(D), 6038C(d)(4)).

The legislative history of the 1989 Act amendments to section 6038A states that the suspension of the statute of limitations applies to "the taxable year(s) at issue." [2] The legislative history of the 1990 Act, which added section 6038C to the Code, uses the same language.[3]

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[2] H. Rep. No. 247, 101st Cong., 1st Sess. 1301 (1989); "Explanation of Provisions Approved by the Committee on October 3, 1989," Senate Finance Committee Print, 101st Cong., 1st Sess. 118 (October 12, 1989).

[3] "Legislative History of Ways and Means Democratic Alternative," House Ways and Means Committee Print (WMCP: 101–37), 101st Cong., 2nd Sess. 58 (October 15, 1990); Report language submitted by the Senate Finance Committee to the Senate Budget Committee on S. 3299, 136 *Cong. Rec.* S 15629, S 15700 (1990).

Explanation of provision

The bill modifies the provisions in sections 6038A and 6038C that suspend the statute of limitations to clarify that the suspension applies to any taxable year the determination of the amount of tax imposed for which is affected by the transaction or item to which the summons relates.

The Committee intends that, under the bill, a transaction or item would affect the determination of the amount of tax imposed for the taxable year directly at issue, as well as for any taxable year indirectly affected through, for example, net operating loss carrybacks or carryforwards. The Committee does not intend that, under the bill, a transaction or item would affect the determination of the amount of tax imposed for any taxable year other than the taxable year directly at issue solely by reason of any similarity of issues involved. Similarly, the Committee does not intend that, under the bill, a transaction or item would affect the determination of the amount of tax imposed on any taxpayer unrelated to the taxpayer to whom the summons is directed.

4. Rate of interest for large corporate underpayments (secs. 102(c)(6) and (7) of the bill, sec. 11341 of the 1990 Act, and sec. 6621(c) of the Code)

Present law

The rate of interest otherwise applicable to underpayments of tax is increased by two percent in the case of large corporate underpayments (generally defined to exceed $100,000), applicable to periods after the 30th day following the earlier of a notice of proposed deficiency, the furnishing of a statutory notice of deficiency, or an assessment notice issued in connection with a nondeficiency procedure.

Explanation of provision

The bill provides that an IRS notice that is later withdrawn because it was issued in error does not trigger the higher rate of interest. The bill also corrects an incorrect reference to "this subtitle".

D. EXPIRING TAX PROVISIONS

1. Exclusion for employer-provided educational assistance (sec. 102(d)(1) of the bill, sec. 11403 of the 1990 Act, and secs. 127 and 132 of the Code)

Present law

Employer-provided educational assistance is excludable from gross income if the value of the assistance does not exceed $5,250 and certain other requirements are satisfied (sec. 127). Prior to the 1990 Act, the exclusion did not apply to graduate level courses. The 1990 Act eliminated this restriction. The Omnibus Budget Reconciliation Act of 1989 provided that educational assistance that is not excludable under section 127 due to the dollar limitation on the exclusion and the restriction on graduate level courses is excludable from gross income if and only if it qualifies as a working condition fringe benefit (sec. 132(h)).

Explanation of provision

The bill amends the fringe benefit rules to reflect the fact that the graduate level course restriction has been reprealed.

2. Research credit provision: Effective date for repeal of special proration rule (sec. 102(d)(2) of the bill and sec. 11402 of the 1990 Act)

Present law

The Omnibus Budget Reconciliation Act of 1989 effectively extended the research credit for nine months by prorating certain qualified research expenses incurred before January 1, 1991. The special rule to prorate qualified research expenses applied in the case of any taxable year which began before October 1, 1990, and ended after September 30, 1990. Under this special proration rule, the amount of qualified research expenses incurred by a taxpayer prior to January 1, 1991, was multiplied by the ratio that the number of days in that taxable year before October 1, 1990, bears to the total number of days in such taxable year before January 1, 1991. The amendments made by the 1989 Act to the research credit (including the new method for calculating a taxpayer's base amount) generally were effective for taxable years beginning after December 31, 1989. However, this effective date did not apply to the special proration rule (which applied to any taxable year which began prior to October 1, 1990—including some years which began before December 31, 1989—if such taxable year ended after September 30, 1990).

Section 11402 of the Omnibus Budget Reconciliation Act of 1990 extended the research credit through December 31, 1991, and repealed the special proration rule provided for by the 1989 Act. Section 11402 of the 1990 Act was effective for taxable years beginning after December 31, 1989. Thus, in the case of taxable years beginning before December 31, 1989, and ending after September 30, 1990 (e.g., a taxable year of November 1, 1989 through October 31, 1990), the special proration rule provided by the 1989 Act would continue to apply.

Explanation of provision

The bill repeals for all taxable years ending after December 31, 1989, the special proration rule provided for by the 1989 Act.

E. ENERGY TAX PROVISION: ALTERNATIVE MINIMUM TAX ADJUSTMENT BASED ON ENERGY PREFERENCES (SECS. 102(E)(2) AND (6) OF THE BILL, SEC. 11531(A) OF THE 1990 ACT, AND SEC. 56(H) OF THE CODE)

Present law

In computing alternative minimum taxable income (and the adjusted current earnings (ACE) adjustment of the alternative minimum tax), certain adjustments are made to the taxpayer's regular tax treatment for intangible drilling costs (IDCs) and depletion. A special energy deduction is also allowed. The special energy deduction is initially determined by determining the taxpayer's (1) intangible drilling cost preference and (2) the marginal production depletion preference. The intangible drilling cost preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to the adjustments for IDCs. The marginal production depletion preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to depletion adjustments attributable to marginal production. The intangible drilling cost preference is then apportioned between (1) the portion of the preference related to qualified exploratory costs and (2) the remaining portion of the preference. The portion of the preference related to qualified exploratory costs is multiplied by 75 percent and the remaining portion is multiplied by 15 percent. The marginal production depletion preference is multiplied by 50 percent. The three products described above are added together to arrive at the taxpayer's special energy deduction (subject to certain limitations).

The special energy deduction is not allowed to the extent that it exceeds 40 percent of alternative minimum taxable income determined without regard to either this special energy deduction or the alternative tax net operating loss deduction. Any special energy deduction amount limited by the 40-percent threshold may not be carried to another taxable year. In addition, the combination of the special energy deduction, the alternative minimum tax net operating loss and the alternative minimum tax foreign tax credit cannot generally offset, in the aggregate, more than 90 percent of a taxpayer's alternative minimum tax determined without such attributes.

Explanation of provisions

Interaction of special energy deduction with net operating loss and investment tax credit

The bill clarifies that the amount of alternative tax net operating loss that is utilized in any taxable year is to be appropriately adjusted to take into account the amount of special energy deduction claimed for that year. This operates to preserve a portion of the alternative tax net operating loss carryover by reducing the amount of net operating loss utilized to the extent of the special energy deduction claimed, which if unused, could not be carried forward.

In addition, the bill contains a similar provision which clarifies that the limitation on the utilization of the investment tax credit for purposes of the alternative minimum tax is to be determined without regard to the special energy deduction.

Interaction of special energy deduction with adjustment based on adjusted current earnings

The bill provides that the ACE adjustment is to be computed without regard to the special energy deduction. Thus, the bill specifies that the ACE adjustment is equal to 75 percent of the excess of a corporation's adjusted current earnings over its alternatives minimum taxable income computed without regard to either the ACE adjustment, the alternative tax net operating loss deduction, or the special energy deduction.

F. ESTATE TAX FREEZES (SEC. 102(F) OF THE BILL, SEC. 11602 OF THE 1990 ACT, AND SECS. 2701-04 OF THE CODE)

Present law

Generally

The value of property transferred by gift or includible in the decedent's gross estate is its fair market value. Fair market value is generally the price at which the property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts (Treas. Reg. sec. 20.2031). Chapter 14 contains rules that supersede the willing buyer, willing seller standard (Code secs. 2701-04).

Preferred interests in corporations and partnerships

Valuation of retained interests

Scope.—Section 2701 provides special rules for valuing certain rights retained in conjunction with the transfer to a family member of an interest in a corporation or partnership. These rules apply to any applicable retained interest held by the transferor or an applicable family member immediately after the transfer of an interest in such entity. An "applicable family member " is, with respect to any transferor, the transferor's spouse, ancestors of the transferor and the spouse, and spouses of such ancestors.

An applicable retained interest is an interest with respect to which there is one of two types of rights ("affected rights"). The first type of affected right is a liquidation, put, call, or conversion right, generally defined as any liquidation, put, call, or conversion right, or similar right, the exercise or nonexercise of which affects the value of the transferred interest. The second type of affected right is a distribution right [4] in an entity in which the transferor and applicable family members hold control immediately before the transfer. In determining control, an individual is treated as holding any interest held by the individual's brothers, sisters and lineal descendents. A distribution right does not include any right with respect to a junior equity interest.

Valuation.—Section 2701 contains two rules for valuing applicable retained interests. Under the first rule, an affected right other than a right to qualified payments is valued at zero. Under the second rule any retained interest that confers (1) a liquidation, put, call or conversion right and (2) a distribution right that consists of the right to receive a qualified payment is valued on the assumption that each right is exercised in a manner resulting in the lowest value for all such rights (the "lowest value rule"). There is no statutory rule governing the treatment of an applicable retained interest that confers a right to receive a qualified payment but with respect to which there is no liquidation, put, call or conversion right.

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[4] A distribution right generally is a right to a distribution from a corporation with respect to its stock, or from a partnership with respect to a partner's interest in the partnership.

A qualified payment is a dividend payable on a periodic basis and at a fixed rate under cumulative preferred stock (or a comparable payment under a partnership agreement). A transferor or applicable family member may elect not to treat such a dividend (or comparable payment) as a qualified payment. A transferor or applicable family member also may elect to treat any other distribution right as a qualified payment to be paid in the amounts and at the times specified in the election.

Inclusion in transfer tax base.—Failure to make a qualified payment valued under the lowest value rule within four years of its due date generally results in an inclusion in the transfer tax base equal to the difference between the compounded value of the scheduled payments over the compounded value of the payments over the compounded value of the payments actually made. The Treasury Department has regulatory authority to make subsequent transfer tax adjustments in the transfer of an applicable retained interest to reflect the increase in a prior taxable gift by reason of section 2701.

Generally, this inclusion occurs if the holder transfers by sale or gift the applicable retained interest during life or at death. In addition, the taxpayer may, by election, treat the payment of the qualified payment as giving rise to an inclusion with respect to prior periods.

The inclusion continues to apply if the applicable retained interest is transferred to an applicable family member. There is no inclusion on a transfer of an applicable retained interest to a spouse for consideration or in a transaction qualifying for the marital deduction but subsequent transfers by the spouse are subject to the inclusion. Other transfers to applicable family members result in an immediate inclusion as well as subjecting the transferee to subsequent inclusions.

Minimum value of residual interest

Section 2701 also establishes a minimum value for a junior equity interest in a corporation or partnership. For partnerships, a junior equity interest is an interest under which the rights to income and capital are junior to the rights of all other classes of equity interests.

Trusts and term interests in property

The value of a transfer in trust is the value of the entire property less the value of rights in the property retained by the grantor. Section 2702 provides that in determining the extent to which a transfer of an interest in trust to a member of the transferor's family is a gift, the value of an interest retained by the transferor or an applicable family member is zero unless such interest takes certain prescribed forms.

For a transfer with respect to a specified portion of property, section 2702 applies only to such portion. The section does not apply to the extent that the transfer is incomplete.

Options and buy-sell agreements

A restriction upon the sale or transfer of property may reduce its fair market value. Treasury regulations provide that a restriction is to be disregarded unless the agreement represents a bona fide business arrangement and not a device to pass the decedent's shares to the natural objects of his bounty for less than full and adequate consideration (Treas. Reg. sec. 20.2031-2(h)).

Section 2703 provides that for transfer tax purposes the value of property is determined without regard to any option, agreement or other right to acquire or use the property at less than fair market value or any restriction on the right to sell or use such property. Certain options are excepted from this rule. To fall within the exception, the option, agreement, right or restriction must (1) be a bona fide business arrangement, (2) not be a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth, and (3) have terms comparable to similar arrangements entered into by persons in an arm's length transaction.

Explanation of provisions

Preferred interests in corporations and partnerships

Valuation

The bill provides that an applicable retained interest conferring a distribution right to qualified payments with respect to which there is no liquidation, put, call, or conversion right is valued without regard to section 2701. The bill also provides that the retention of such right gives rise to potential inclusion in the transfer tax base. In making these changes, it is understood that Treasury regulations could provide, in appropriate circumstances, that a right to receive amounts on liquidation of the corporation or partnership constitutes a liquidation right within the meaning of section 2701 if the transferor, alone or with others, holds the right to cause liquidation.

The bill modifies the definition of junior equity interest by granting regulatory authority to treat a partnership interest with rights that are junior with respect to either income or capital as a junior equity interest. The bill also modifies the definition of distribution right by replacing the junior equity interest exception with an exception for a right under an interest that is junior to the rights of the transferred interest. As a result, section 2701 does not affect the valuation of a transferred interest that is senior to the retained interest, even if the retained interest is not a junior equity interest.

The bill modifies the rules for electing into or out of qualified payment treatment. A dividend payable on a periodic basis and at a fixed rate under a cumulative preferred stock held by the transferor is treated as a qualified payment unless the transferor elects otherwise. If held by an applicable family member, such stock is not treated as a qualified payment unless the holder so elects.[5] In addition, a transferor or applicable family member holding any other distribution right may treat such right as a qualified payment to be paid in the amounts and at the times specified in the election.

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[5] With respect to gifts made in 1990, the bill provides that this election may be made by the due date (including extensions) of the transferor's 1991 gift tax return.

Inclusion in transfer tax base

The bill grants the Treasury Department regulatory authority to make subsequent transfer tax adjustments to reflect the inclusion of unpaid amounts with respect to a qualified payment. This authority, for example, would permit the Treasury Department to eliminate the double taxation that might occur if, with respect to a transfer, both the inclusion and the value of qualified payment arrearages were included in the transfer tax base. It would also permit elimination of the double taxation that might result from a transfer to a spouse, who, under the statute, is both an applicable family member and a member of the transferor's family.

The bill treats a transfer to a spouse falling under the annual exclusion the same as a transfer qualifying for the marital deduction. Thus, no inclusion would occur upon the transfer of an applicable retained interest to a spouse, but subsequent transfers by the spouse would be subject to inclusion. The bill also clarifies that the inclusion continues to apply if an applicable family member transfers a right to qualified payments to the transferor.

The provision clarifies the consequences of electing to treat a distribution as giving rise to an inclusion. Under the bill, the election gives rise to an inclusion only with respect to the payment for which the election is made. The inclusion with respect to other payments is unaffected.

Trust and term interests in property

The bill conforms section 2702 to existing regulatory terminology by substituting the term "incomplete gift" for "incomplete transfer." In addition, the bill limits the exception for incomplete gifts to instances in which the entire gift is incomplete. The Treasury Department is granted regulatory authority, however, to create additional exceptions not inconsistent with the purposes of the section. This authority, for example, could be used to except a charitable trust that meets the requirements of section 664 and that does not otherwise create an opportunity for transferring property to a family member free of transfer tax.

Options and buy-sell agreements

The bill modifies the exception to the rule disregarding an option for transfer tax valuation. The requirement that the option, agreement, right or restriction not be a device to transfer the property to members of the decedent's family is revised to require that the option not be a device to transfer the property to persons who are natural objects of the bounty of the transferor. This revision conforms section 2703 to the Treasury regulations and recognizes that the section applies with respect to all transfer taxes.

G. MISCELLANEOUS PROVISIONS

1. Conforming amendments to the repeal of the General Utilities doctrine (sec. 102(g) (1) and (2) of the bill, sec. 11702(e)(2) of the 1990 Act, and secs. 897(f) and 1248 of the Code)

Present law

As a result of changes made by recent tax legislation, gain is generally recognized on the distribution of appreciated property by a corporation to its shareholders. The Technical Corrections subtitle of the 1990 Act and technical correction provisions in prior acts made various conforming amendments arising out of these changes. For example, the 1990 Act made a conforming change to section 355(c) to state the treatment of distributions in section 355 transactions in the affirmative rather than by reference to the provisions of section 311. In addition, the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") made a conforming change to section 1248(f) to update the references to the nonrecognition provisions contained in that subsection. One of the changes was to change the reference to "section 311(a)" from "section 311".

Explanation of provisions

The bill makes three conforming changes to the Code.

First, section 897(f), relating to the basis in a United States real property interest distributed to a foreign person, is repealed as deadwood. The basis of the distributed property is its fair market value in accordance with section 301(d).

Second, section 1248(f) is amended to add a reference to section 355(c)(1), which provides generally for the nonrecognition of gain or loss on the distribution of stock or securities in certain subsidiary corporations. This retains the substance of the law as it existed before the conforming change to section 355(c) made by the 1990 Act.

Third, section 1248 is amended to clarify that, notwithstanding the conforming changes made by the 1988 Act, with respect to any transaction in which a U.S. person is treated as realizing gain from the sale or exchange of stock of a controlled foreign corporation, the U.S. person shall be treated as having sold or exchanged the stock for purposes of applying section 1248. Thus if a U.S. person distributes appreciated stock of a controlled foreign corporation to its shareholders in a transaction in which gain is recognized under section 311(b), section 1248 shall be applied as if the stock had been sold or exchanged at its fair market value. Under section 1248(a), part or all of the gain may be treated as a dividend. Under the bill, the rule treating the distribution for purposes of section 1248 as a sale or exchange also applies where the U.S. person is deemed to distribute the stock under the provisions of section 1248(i). Under section 1248(i), gain will be recognized only to the extent of the amount treated as a dividend under section 1248.

These amendments are not intended to affect the authority of the Secretary to issue regulations under section 1248(f) providing exceptions to the rule recognizing gain in certain distributions (cf. Notice 87-64, 1987-2 C.B. 375).

2. Prohibited transaction rules (sec. 102(g)(3) of the bill, sec. 11701(m) of the 1990 Act, and sec. 4975 of the Code)

Present law

The Code and title I of the Employee Retirement Income Security Act of 1974 (ERISA) prohibit certain transactions between an employee benefit plan and certain persons related to such plan. An exemption to the prohibited transaction rules of title I of ERISA is provided in the case of sales of employer securities the plan is required to dispose of under the Pension Protection Act of 1987 (ERISA sec. 408(b)(12)). The 1990 Act amended the Code to provide that certain transactions that are exempt from the prohibited transaction rules of ERISA are automatically exempt from the prohibited transaction rules of the Code. The 1990 Act change was intended to be limited to transactions exempt under section 408(b)(12) of ERISA.

Explanation of provision

The bill conforms the statutory language to legislative intent by providing that transactions that are exempt from the prohibited transaction rules of ERISA by reason of ERISA section 408(b)(12) are also exempt from the prohibited transaction rules of the Code.

3. Effective date of LIFO adjustment for purposes of computing adjusted current earnings (sec. 102(g)(4) of the bill, sec. 11701 of the 1990 Act, sec. 7611(b) of the 1989 Act, and sec. 56(g) of the Code)

Present law

For purposes of computing the adjusted current earnings (ACE) component of the corporate alternative minimum tax, taxpayers are required to make the LIFO inventory adjustments provided in section 312(n)(4) of the Code. Section 312(n)(4) generally is applicable for purposes of computing earnings and profits in taxable years beginning after September 30, 1984. The ACE adjustment generally is applicable to taxable years beginning after December 31, 1989.

Explanation of provision

The bill clarifies that the LIFO inventory adjustment required for ACE purposes shall be computed by applying the rules of section 312(n)(4) only with respect to taxable years beginning after December 31, 1989. The effective date applicable to the determination of earnings and profits (September 30, 1984) is inapplicable for purposes of the ACE LIFO inventory adjustment. Thus, the ACE LIFO adjustment shall be computed with reference to increases (and decreases, to the extent provided in regulation) in the ACE LIFO reserve in taxable years beginning after December 31, 1989.

4. Low-income housing credit (sec. 102(g)(5) of the bill, sec. 11701(a)(11) of the 1990 Act, and sec. 42 of the Code)

Present law

The amendments to the low-income housing tax credit contained in the Omnibus Budget Reconciliation Act of 1989 generally were effective for a building placed in service after December 31, 1989, to the extent the building was financed by tax-exempt bonds ("a bond-financed building"). This rule applied regardless of when the bonds were issued.

A technical correction enacted in the Omnibus Budget Reconciliation Act of 1990 limited this effective date to buildings financed with bonds issued after December 31, 1989. Thus, the technical correction applied pre-1989 Act law to a bond-financed building placed in service after December 31, 1989, if the bonds were issued before January 1, 1990.

Explanation of provision

The bill repeals the 1990 technical correction. The bill provides, however, that pre-1989 Act law will apply to a bond-financed building if the owner of the building establishes to the satisfaction of the Secretary of the Treasury reasonable reliance upon the 1990 technical correction.

The committee intends that, in the case of buildings placed in service before the date of the bill's enactment, reasonable reliance may be established by a showing of compliance with the law as in effect for those buildings before enactment of the amendments made by the bill.

H. EXPIRED OR OBSOLETE PROVISIONS ("DEADWOOD PROVISIONS") (SEC. 102(H) OF THE BILL AND SECS. 11801-11816 OF THE 1990 ACT)

Present law

The 1990 Act repealed and amended numerous sections of the Code by deleting obsolete provisions ("deadwood"). These amendments were not intended to make substantive changes to the tax law.

Explanation of provisions

The bill makes several amendments to restore the substance of prior law which was inadvertently changed by the deadwood provisions of the 1990 Act. These amendments include (1) a provision restoring the prior-law depreciation treatment of certain energy property (sec. 168(e)(3)(B)(vi)); (2) a provision restoring the prior-law definition of property eligible for expensing (sec. 179(d)); (3) a provision restoring the prior-law rule providing that if any member of an affiliated group of corporations elects the credit under section 901 for foreign taxes paid or accrued, then all members of the group paying or accruing such taxes must elect the credit in order for any dividend paid by a member of the group to qualify for the 100-percent dividends received deduction (sec. 243(b)); and (4) the provisions relating to the collection of State individual income taxes (secs. 6361-6365).

The bill also makes several nonsubstantive clerical amendments to conform the Code to the amendments made by the deadwood provisions. None of these amendments is intended to change to substance of pre-1990 law.

II. Other Tax Technical Corrections

A. HEDGE BONDS (SEC. 103(B) OF THE BILL, SEC. 11701 OF THE 1990 ACT, AND SEC. 149(G) OF THE CODE)

Present law

The 1989 Act provided generally that interest on hedge bonds is not tax-exempt unless prescribed minimum percentages of the proceeds are reasonably expected to be spent at set intervals during the five-year period after issuance of the bonds (sec. 149(g)). A hedge bond is defined generally as a bond (1) at least 85 percent of the proceeds of which are not reasonably expected to be spent within three years following issuance and (2) more than 50 percent of the proceeds of which are invested at substantially guaranteed yields for four years or more.

This restriction does not apply to hedge bonds, however, if at least 95 percent of the proceeds are invested in other tax-exempt bonds (not subject to the alternative minimum tax). The 95-percent investment requirement is not violated if investment earnings exceeding five percent of the proceeds are temporarily invested for up to 30 days pending reinvestment in taxable (including alternative minimum taxable) investments.

Explanation of provision

The bill clarifies that the 30-day exception for temporary investments of investment earnings applies to amounts (i.e., principal and earnings thereon) temporarily invested during the 30-day period immediately preceding redemption of the bonds as well as such periods preceding reinvestments of the proceeds.

B. WITHHOLDING ON DISTRIBUTIONS FROM U.S. REAL PROPERTY HOLDING COMPANIES (SEC. 103(C) OF THE BILL, SEC. 129 OF THE DEFICIT REDUCTION ACT OF 1984, AND SEC. 1445 OF THE CODE)

Present law

Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), a foreign investor that disposes of a U.S. real property interest generally is required to pay tax on any gain on the disposition. For this purpose a U.S. real property interest generally includes stock in a domestic corporation that is a U.S. real property holding corporation ("USRPHC"), or was a USRPHC at any time during the previous five years.

A sale or exchange of stock in a USRPHC is an example of a disposition of a U.S. real property interest. In addition, provisions of subchapter C of the Code treat amounts received in certain corporate distributions as amounts received in sales or exchanges, giving rise to tax liability under the FIRPTA rules when a foreign person receives such a distribution from a present or former USRPHC. Thus, amounts received by a foreign shareholder in a USRPHC in a distribution in complete liquidation of the USRPHC are treated as in full payment in exchange for the USRPHC stock, and are therefore subject to tax under FIRPTA (sec. 331; Treas. Reg. sec. 1.897-5T(a)(2)(iii)). Similarly, amounts received by a foreign shareholder in a USRPHC upon redemption of the USRPHC stock are treated as a distribution in part or full payment in exchange for the stock, and are therefore subject to tax under FIRPTA (sec. 302(a); Treas. Reg. sec. 1.897-5T(a)(2)(ii)). Third, amounts received by a foreign shareholder in a USRPHC, in a section 301 distribution from the USRPHC that exceeds the available earnings and profits of the USRPHC, are treated as gain from the sale or exchange of the shareholder's USRPHC stock to the extent that they exceed the shareholder's adjusted basis in the stock; such amounts are therefore also subject to tax under FIRPTA (sec. 301(c)(3); Treas. Reg. sec. 1.897-5T(a)(2)(i)).

FIRPTA WITHHOLDING

The Tax Reform Act of 1984 established a withholding system to enforce the FIRPTA tax. Unless an exception applies, a transferee of a U.S. real property interest from a foreign person generally is required to withhold the lesser of ten percent of the amount realized (purchase price), or the maximum tax liability on disposition (as determined by the IRS) (sec. 1445).

Although the FIRPTA withholding requirement by its terms generally applies to all dispositions of U.S. real property interests, and subchapter C treats amounts received in certain distributions as amounts received in sales or exchanges, the FIRPTA withholding provisions also provide express rules for withholding on certain distributions treated as sales or exchanges. Generally, distributions in a transaction to which section 302 (redemptions) or part II of subchapter C (liquidations) applies are subject to 10 percent withholding.[6] Although a section 301 distribution in excess of earnings and profits is also treated as a disposition for purposes of computing the FIRPTA liability of a foreign recipient of the distribution, there is no corresponding withholding provision expressly addressed to the payor of such a distribution.

Explanation of provision

The bill clarifies that FIRPTA withholding requirements apply to any section 301 distribution to a foreign person by a domestic corporation that is or was a USRPHC, which distribution is not made out of the corporation's earnings and profits and is therefore treated as an amount received in a sale or exchange of a U.S. real property interest. (The bill does not alter the withholding treatment of section 301 distributions by such a corporation that are out of earnings and profits.) Under the bill, the FIRPTA withholding requirements that apply to a section 301 distribution not out of earnings and profits are similar to the requirements applicable to redemption or liquidation distributions to a foreign person by such a corporation. The provision is effective for distributions made after the date of enactment of the bill. No inference is intended as to the FIRPTA withholding requirements applicable to such a distribution under present law.

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[6] Under other rules, dividend distributions (i.e., distributions to which sec. 301(c)(1) applies) to foreign persons by U.S. corporations, including USRPHCs, are subject to 30-percent withholding under the Code. Under treaties, the withholding on a dividend may be reduced to as little as 5 or 15 percent.

C. TREATMENT OF CREDITS ATTRIBUTABLE TO WORKING INTERESTS IN OIL AND GAS PROPERTIES (SEC. 103(D) OF THE BILL, SEC. 501 OF THE TAX REFORM ACT OF 1986, AND SEC. 469 OF THE CODE)

Present law

Under present law, a working interest in an oil and gas property which does not limit the liability of the taxpayer is not a "passive activity" for purposes of the passive loss rules (sec. 469). However, if any loss from an activity is treated as not being a passive loss by reason of being from a working interest, any net income from the activity in subsequent years is not treated as income from a passive activity, notwithstanding that the activity may otherwise have become passive with respect to the taxpayer.

Explanation of provision

The bill provides that any credit attributable to a working interest in an oil and gas property, in a taxable year in which the activity is no longer treated as not being a passive activity, will not be treated as attributable to a passive activity to the extent of any tax allocable to the net income from the activity for the taxable year. Any credits from the activity in excess of this amount of tax will continue to be treated as arising from a passive activity and will be treated under the rules generally applicable to the passive activity credit.

D. CLARIFICATION OF PASSIVE LOSS DISPOSITION RULE (SEC. 103(E) OF THE BILL, SEC. 501 OF THE TAX REFORM ACT OF 1986, SEC. 1005(A)(2)(A) OF THE TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988, AND SEC. 469(G)(1)(A) OF THE CODE)

Present law

The Tax Reform Act of 1986 provided that if a passive activity is disposed of in a transaction in which all gain or loss is recognized, any overall loss from the activity in the year of disposition is recognized and allowed against income (whether active or passive income).[7] The language of the 1986 Act provided that any loss was allowable, first, against income or gain from the passive activity, second, against income or gain from all passive activities, and finally, against any other income or gain. This rule was rewritten by the technical corrections portion of the Technical and Miscellaneous Revenue Act of 1988. The statutory language (as amended by the 1988 Act) providing for the computation of the overall loss for the taxable year of disposition is not entirely clear where the activity is disposed of at a gain.

Explanation of provision

The bill clarifies the rule relating to the computation of the overall loss allowed upon the disposition of a passive activity. The bill provides that, in a transaction in which all gain or loss is recognized on the disposition of a passive activity, any loss from the activity for the taxable year (taking into account all income, gain, and loss, including gain or loss recognized on the disposition) in excess of any net income or gain from other passive activities for the taxable year is treated as a loss which is not from a passive activity. The provision applies to taxable years beginning after December 31, 1986.

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[7] See S. Rept. 99-313, p. 725.

E. EXCLUSION FROM INCOME FOR COMBAT ZONE COMPENSATION (SEC. 103 (I) (4) OF THE BILL AND SEC. 112 OF THE CODE)

Present law

The Code provides that gross income does not include compensation received by a taxpayer for active service in the Armed Forces of the United States for any month during any part of which the taxpayer served in a combat zone (or was hospitalized as a result of such service) (limited to $500 per month for officers). The heading refers to "combat pay," although that term is no longer used to refer to special pay provisions for members of the Armed Forces, nor is the exclusion limited to those special pay provisions (hazardous duty pay (37 U.S.C. sec. 301) and hostile fire or imminent danger pay (37 U.S.C. sec. 310)).

Explanation of provision

The bill modifies the heading of Code section 112 to refer to "combat zone compensation" instead of "combat pay". The bill also makes conforming changes to cross-references elsewhere in the Code.

F. ESTATE TAX UNIFIED CREDIT ALLOWED NONRESIDENT ALIENS UNDER TREATY (SEC. 103 (F) (1) OF THE BILL, SEC. 5032 (B) (2) OF THE TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988, AND SEC. 2102 (C) (3) (A) OF THE CODE)

Present law

Amount subject to tax

For U.S. citizens and residents, the amount subject to Federal estate and gift tax is determined by reference to all property, wherever situated. For nonresident aliens, the Code provides that the amount subject to Federal estate and gift tax is determined only by reference to property situated in the United States.

The United States has entered into bilateral treaties designed to avoid double transfer taxation. Early treaties typically did this by providing rules for determining situs and requiring that the State of domicile allow a credit for taxes paid to the situs country.[8] In contrast, treaties signed in the 1980s, and the U.S. and OECD model treaties, exempt most property, wherever situated, from taxation outside the State of domicile.[9]

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[8] See Staff of the Joint Committee on Taxation, 98th Cong., 2d Sess., *Explanation of Proposed Estate and Gift Tax Treaty Between the United States and Sweden* 8 (1984).

[9] See, *e.g.*, U.S. Treasury Model Estate and Gift Tax Treaty (1980), Article 7, paragraph 1: "Transfers and deemed transfers by an individual domiciled in a Contracting State of property other an property referred to in Article 5 (Real Property) and 6 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services) shall be taxable only in that State."

Specific exemption and unified credit

Prior to the Tax Reform Act of 1976, the Code allowed a "specific exemption" against the estate tax. The estate of a U.S. citizen or resident was allowed an exemption of $60,000, while the estate of a nonresident alien was allowed a lesser amount. A number of U.S. estate tax treaties ratified in the 1950s allowed a nonresident alien a "specific exemption" equal to the exemption allowed a U.S. citizen or resident multiplied by the percentage of the gross estate subject to U.S. estate tax (the "pro rata exemption").[10]

The Tax Reform Act of 1976 replaced the specific exemption with a unified credit of $47,000 for the estate of U.S. citizen or resident and $3,600 for the estate of a nonresident alien. After 1976, two courts interpreted the pro rata exemption allowed in the 1950s treaties as applying to the unified credit, i.e., as allowing a unified credit no less than the unified credit allowed a U.S. citizen or resident multiplied by the percentage of the gross estate situated in the United States (and therefore subject to U.S. estate tax under those treaties).[11]

The Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") increased the unified credit allowed an estate of a nonresident alien to $13,000. In so doing, TAMRA provided that, "to the extent required by any treaty," the estate of a nonresident alien is allowed a uniformed credit equal to the unified credit allowed a U.S. citizen or resident multiplied by the percentage of the gross estate situated in the United States (Code sec. 2102(c)(3)(A)). Thus, TAMRA did not override the "specific exemption" language of the 1950s treaties, as interpreted by the two courts, and could be interpreted as encouraging the negotiation of pro rata unified credits in future treaties.

Explanation of provision

The bill clarifies that in determining the pro rata unified credit required by treaty, property exempted by the treaty from U.S. estate tax is not treated as situated in the United States. Under this rule, a treaty granting a pro rata unified credit would allow a nonresident alien the unified credit allowed a U.S. citizen or resident multiplied by the percentage of the gross estate subject to U.S. estate tax, as modified by treaty.

The committee does not intend to affect existing treaties containing pro rata exemptions, because in those treaties taxation follows situs. For future treaties, the committee intends that any pro rata unified credit negotiated not exceed the proportion of the gross worldwide estate subject to U.S. estate and gift tax, as modified by treaty.

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[10] See Rev. Rul. 81-303, 1981-2 C.B. 255.

[11] *See Mudry* v. *United States*, 11 Cl. Ct. 207 (1986) (Swiss treaty); *Burghardt* v. *Commissioner*, 80 T.C. 705 (1983), *aff'd*, 734 F.2d 3 (3d Cir. 1984) (Italian treaty).

G. LIMITATION ON DEDUCTION FOR CERTAIN INTEREST PAID BY CORPORATION TO RELATED PERSON (SEC. 103(F)(2) OF THE BILL, SEC. 7210(A) OF THE 1989 ACT, AND SEC. 163(J) OF THE CODE)

Present law

Subject to certain limitations, a taxpayer may deduct interest paid or accrued on indebtedness within a taxable year (sec. 163(a)). The 1989 Act added a so-called "earnings stripping" limitation on interest deductibility with respect to certain interest paid by corporations to related persons (sec. 163(j)). If the provision applies to a corporation for a taxable year, it disallows deductions for certain amounts of "disqualified interest" paid or accrued by the corporation during that year. If in a taxable year a deduction is disallowed, under the provision, for an amount of interest paid or accrued in that year, the disallowed amount is treated under the earnings stripping provision as disqualified interest paid or accrued in the succeeding taxable year.[12]

In order for the earnings stripping provision to apply to a corporation for a taxable year, two thresholds must be exceeded. To exceed the first threshold, the corporation must have "excess interest expense" as that term is defined in the Code for this purpose. To exceed the second threshold, the corporation must have a ratio of debt to equity as of the close of the taxable year in question (or on any other day prescribed by the Secretary in regulations) that exceeds 1.5 to 1. Excess interest expense is the excess (if any) of the corporation's net interest expense over the sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward from a prior year. Excess limitation is the excess (if any) of 50 percent of adjusted taxable income over net interest expense.

Explanation of provisions

The bill provides that the debt-equity threshold does not apply for purposes of applying the earnings stripping provision to a carryover of excess interest expense from a prior taxable year. Thus, the bill clarifies that excess interest carried forward from a year in which the debt-equity ratio threshold is exceeded may be deducted in a subsequent year in which that threshold is not exceeded, but only to the extent that such interest would not otherwise be treated as excess interest expense in the carryforward year.

For example, assume that in year 1 $20 of a corporation's interest expense is nondeductible due to the operation of the earnings stripping provision. The corporation carries forward the $20 of interest deduction that it could not use in year 1. Assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $400 of adjusted taxable income. The bill is intended to clarify that the $20 of interest carried forward from year 1 is deductible in year 2. This is because $70, the sum of the current net interest expense for year 2 ($50) plus the interest expense carried over from year 1 ($20), does not exceed one-half of adjusted taxable income in year 2.

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[12] Disqualified interest is interest paid by a corporation to related persons that are not subject to U.S. tax on the interest received. (If, in accordance with a U.S. income tax treaty, interest income of a related person is subject to a reduced rate of U.S. tax, a portion of the interest paid to the related person is deemed to be interest on which no tax is imposed.)

As another example, assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $80 of adjusted taxable income. The bill is intended to clarify that the $20 of interest carried forward from year 1 is not deductible in year 2. This is because the current net interest expense for year 2 ($50) exceeds by $10 one-half of adjusted taxable income in year 2 ($80 divided by 2, or $40). Therefore, treating the year 1 carryover as an interest expense in year 2 causes the corporation to have excess interest expense equal to $30. But for the debt-equity safe harbor, the corporation would have a $30 interest expense disallowance in year 2 if the carried over amount were treated as having been paid in year 2. Under the bill, no actual year 2 interest can be disallowed. However, under these facts, none of the interest carried over from year 1 can be deducted in year 2. Instead, the interest carried over from year 1 is carried forward for potential deduction (subject to the same rules that applied to the carryforward in year 2) in a year subsequent to year 2.

As a third example, assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $110 of adjusted taxable income. The bill is intended to clarify that that $5 of interest carried forward from year 1 is deductible in year 2, and the other $15 of interest carried forward from year 1 is not deductible in year 2. This is because the current net interest expense for year 2 ($50) is $5 less than one-half of adjusted taxable income in year 2 (one-half of $110, or $55). Therefore, even if the debt-equity safe harbor had not been met in year 2, the corporation would have had $5 of excess limitation in year 2 had there been no carryover amount from year 1. On the other hand, treating the year 1, carryover as an interest expense in year 2 causes the corporation to have excess interest expense equal to $15. This $15 may be carried forward to a subsequent year.

H. BRANCH-LEVEL INTEREST TAX (SEC. 103(F)(3) OF THE BILL, SEC. 1241 OF THE 1986 ACT, AND SEC. 884 OF THE CODE)

Present law

Interest paid (or treated as if paid) by a U.S. trade or business (i.e., a U.S. branch) of a foreign corporation is treated as if paid by a U.S. corporation and, hence, is U.S. source and subject to U.S. withholding tax of 30 percent, unless the tax is reduced or eliminated by a specific Code or treaty provision. The Treasury has regulatory authority to limit U.S. sourcing, and hence U.S. withholding, to the amount of interest reasonably expected to be deducted in arriving at the U.S. branch's effectively connected taxable income.

To the extent a U.S. branch of a foreign corporation has allocated to it under Treasury Regulation section 1.882-5 an interest deduction in excess of the interest actually paid by the branch (this generally occurs where the indebtedness of the U.S. branch is disproportionately small compared to the total indebtedness of the foreign corporation), the excess is treated as if it were interest paid on a notional loan to a U.S. subsidiary (the U.S. branch, in actuality) from its foreign corporate parent (the home office). This excess if subject to the 30-percent tax, absent a specific Code exemption or treaty reduction (sec. 884(f)(1)(B)).

These branch-level interest taxes, along with the branch profits tax, were intended to reflect the view that a foreign corporation doing business in the United States generally should be subject to the same substantive tax rules that apply to a foreign corporation operating in the United States through a U.S. subsidiary.[13] Where a U.S. corporation pays interest to its foreign corporate parent, that interest, like the interest deducted by a U.S. branch of a foreign corporation, is also generally subject to a 30-percent U.S. withholding tax unless the tax is reduced by treaty. In the case of a U.S. subsidiary of a foreign parent corporation, the withholding tax applies without regard to whether the interest payment is currently deductible by the U.S. subsidiary. For example, deductions for interest may be delayed or denied under section 163, 263, 263A, 266, 267, or 469, but it is still subject (or not subject) to withholding when paid without regard to the operation of those provisions.

Explanation of provision

The bill provides that the branch level interest tax on interest not actually paid by the branch applies to any interest which is allocable to income which is effectively connected with the conduct of a trade or business in the United States. Similarly, in the case of interest paid by the U.S. branch, the bill provides regulatory authority to limit U.S. sourcing, and hence U.S. withholding, to the amount of interest reasonably expected to be allocable to income which is effectively connected with the conduct of a trade or business in the United States. Thus, where an interest expense of a foreign corporation is allocable to U.S. effectively connected income, but that interest expense would not have been fully deductible for tax purposes under another Code provision had it been paid by a U.S. corporation, the bill clarifies that such interest is nonetheless treated for branch level interest tax purposes like a payment by a U.S. corporation to a foreign corporate parent. Similarly, with regard to the Treasury's regulatory authority to treat an interest payment by a foreign corporation's U.S. branch as though not paid by a U.S. person for source and withholding purposes, the bill clarifies that the authority extends to interest payments in excess of those reasonably expected to be allocable to U.S. effectively connected income of the foreign corporation.

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[13] Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., *General Explanation of the Tax Reform Act of 1986*, at 1036 (1987).

I. DETERMINATION OF SOURCE IN CASE OF SALES OF INVENTORY PROPERTY (SEC. 103 (F) (4) OF THE BILL, SEC. 211 OF THE 1986 ACT, AND SEC. 865 (B) OF THE CODE)

Present law

Prior to the 1986 Act, the source of income derived from the sale of personal property generally was determined by the place of sale (commonly referred to as the "title passage" rule) (see, e.g., Treas. Reg. sec. 1.861–7, T.D. 6258, 1957–2 C.B. 368). While the 1986 Act generally replaced the place-of-sale rule for sales of personal property with a residence-of-the-seller rule (sec. 865(a)), the Act did not change the place-of-sale rule for most sales of inventory property (sec. 865(b)).

Before and after the 1986 Act, statutory rules for sourcing income from inventory sales have included those covering income from (i) purchasing inventory property outside the United States (other than within a U.S. possession) and selling it in the United States (sec. 861(a)(6)); (ii) purchasing inventory property in the United States and selling it outside the United States (sec. 862(a)(6)); (iii) selling outside the United States inventory property which has been produced by the taxpayer in the United States (or selling in the United States inventory property which has been produced by the taxpayer outside the United States) (sec. 863(b)(2)); and (iv) purchasing inventory property in a U.S. possession and selling it in the United States (sec. 863(b)(3)). Prior to the 1986 Act, these provisions were not limited in application to income from sales of inventory property, but rather covered sales of personal property generally.

In addition to statutory rules for sourcing items of income from transactions involving inventory property specified in the Code, such as those listed above, the Code both before and after the 1986 Act has contained other sourcing rules that do not make specific reference to property sales, and includes general regulatory authority to allocate and apportion between U.S. and foreign sources items of gross income, expenses, losses, and deductions other than those specified in sections 861(a) and 862(a) (sec. 863(a)). In carving income from the sale inventory property out of the general residence-of-the-seller rule of section 865, section 865(b) makes reference to the above statutory rules making specific reference to inventory property, but not to the general grant of regulatory authority in section 863(a).

Explanation of provision

The bill modifies the general provision relating to the sourcing of income from the sale of personal property (section 865) so that the cross-reference to sourcing rules applicable to inventory property includes a reference to all of section 863, rather than simply to section 863(b). The bill thus clarifies that, to the extent that the Secretary had general regulatory authority to provide rules for the sourcing of income from the sales of personal property prior to the 1986 Act, the Secretary retains that authority under present law with respect to inventory property. For example, this bill is not intended to increase the Secretary's regulatory authority under section 863(a) beyond the authority that he had under the law in effect prior to the enactment of the 1986 Act. The committee does not intend that any inference be drawn from this bill either as to the correctness of, or as to the post-1986 Act implications of, any judicial decision interpreting the scope of that pre-1986 Act authority.

J. REPEAL OF OBSOLETE PROVISIONS (SEC. 103(F)(5) OF THE BILL, SEC. 10202 OF THE 1987 ACT, AND SECS. 6038(A)(1)(F) AND 6038A(B)(4) OF THE CODE)

Present law

A U.S. person who controls a foreign corporation must report certain information related to that foreign corporation as may be required by the Treasury Secretary (Code sec. 6038). Information reporting is also required with respect to certain foreign-owned domestic corporations (Code sec. 6038A). Included under each of these information reporting provisions is a requirement to report such information as the Treasury Secretary may require for purposes of carrying out the provisions of section 453C. Section 453C, relating to certain indebtedness treated as payment on installment obligations (the so-called "proportional disallowance rule"), was repealed in the Revenue Act of 1987.

Explanation of provision

The bill repeals as obsolete the information reporting requirements of sections 6038 and 6038A relating to section 453C.

K. CLARIFICATION OF CERTAIN STADIUM BOND TRANSITION RULE IN TAX REFORM ACT OF 1986 (SEC. 103(G) OF THE BILL AND SEC. 1317(3)(A) OF THE TAX REFORM ACT OF 1986)

Present Law

The Tax Reform Act of 1986 included a transition rule authorizing tax-exempt bonds not exceeding $200 million to be issued by or on behalf of the City of Cleveland, Ohio to finance a domed stadium. The bonds were required to be issued before January 1, 1991 (and were so issued). As enacted, the rule required Cleveland to retain a residual interest in the stadium following planned private business use.

Explanation of provision

The bill permits the residual interest in the stadium currently held by the City of Cleveland to be assigned to Cuyahoga County, Ohio (the county in which both Cleveland and the stadium are located) because of a change in Ohio state law prior to issuance of the bonds. The bill does not extend the time for issuing the bonds or otherwise affect the amount of bonds or the location or design of the stadium.

L. HEALTH CARE CONTINUATION RULES (SEC. 103(H) OF THE BILL, SEC. 7862(C)(5) OF THE 1989 ACT, SEC. 4980B(F)(2)(B)(I) OF THE CODE, SEC. 602(2)(A) OF ERISA, AND SEC. 2202(2)(A) OF THE PUBLIC HEALTH SERVICE ACT)

Present law

The Revenue Reconciliation Act of 1989 (the "1989 Act") amended the health care continuation rules to provide that if a covered employee is entitled to Medicare and within 18 months of such entitlement separates from service or has a reduction in hours, the duration of continuation coverage for the spouse and dependents is 36 months from the date the covered employee became entitled to Medicare. One possible interpretation of the statutory language, however, would permit continuation coverage for up to 54 months. This extension of the coverage period was not intended.

Explanation of provision

The bill amends the Code (sec. 4980B), title I of the Employee Retirement Income Security Act (sec. 602), and the Public Health Service Act (sec. 2202(2)(A)) to limit the continuation coverage in such cases to no more than 36 months. The provision is effective for plan years beginning after December 31, 1989.

TITLE II—MEDICARE MISCELLANEOUS AND TECHNICAL AMENDMENTS

I. Subtitle A.—Amendments to Medicare Part A

A. PAYMENTS FOR PPS-EXEMPT HOSPITAL SERVICES (SEC. 201 OF THE BILL, SEC. 4005 OF THE 1990 ACT)

Present law

Certain hospitals and units of hospitals are exempt from Medicare's prospective payment system (PPS), including psychiatric hospitals, rehabilitation hospitals, children's hospitals, long-term hospitals, cancer hospitals, and units of general-purpose hospitals providing similar services to the exempted hospitals. These hospitals and units are reimbursed on the basis of reasonable costs, subject to limits known as target amounts.

OBRA '90 included a provision which increases payments to PPS-exempt hospitals whose costs are in excess of the target amounts. Hospitals will receive fifty percent of the amount by which costs exceed the target amount up to 110 percent of the target amount. The provision was not intended to apply to units of general purpose hospitals which are exempt from PPS.

Explanation of provision

The OBRA '90 provision would be corrected to clarify that only exempt hospitals, and not exempt hospital units, will qualify for additional payments above the target amounts.

B. CLARIFICATION OF DRG PAYMENT WINDOW (SEC. 202 OF THIS BILL, SEC. 4003 OF THE 1990 ACT)

Present law

Services provided to an inpatient of a hospital or an entity wholly owned or operated by a hospital during the three-day period prior to admission are not separately reimbursable under Part B of Medicare.

Explanation of provision

The provision would be amended to clarify that services provided by a organization related to the hospital through ownership or control would also not be separately reimbursable under Part B if provided less than three days prior to admission. It would also clarify that the DRG payment window does not apply to hospitals not paid on the basis of DRGs.

C. ESSENTIAL ACCESS COMMUNITY HOSPITAL (EACH) PROGRAM

(SEC. 203 OF THIS BILL AND SEC. 4008 OF THE 1990 ACT)

Present law

The Secretary is authorized to select up to seven states to participate in the EACH program. Pursuant to a state's recommendations, the Secretary may designate essential access community hospitals and rural primary care hospitals in those seven states. The Secretary is also authorized to designate up to fifteen rural primary care hospitals which are not located in EACH states, giving priority to hospitals participating in a rural health network with other hospitals located in an EACH state. The Secretary may designate urban hospitals as essential access community hospitals if the hospital meets the criteria for classification as a regional referral center.

Rural primary care hospitals are authorized to provide inpatient services in up to six beds for up to 72 hours for patients requiring stabilization prior to being transferred to another hospital, although these requirements may be waived by the Secretary. Rural primary care hospitals are required to have written policies governing the provision of services, and have a physician, physician assistant, or nurse practitioner responsible for the execution of those policies.

There are various minor drafting errors in section 1820 of the Social Security Act.

Explanation of provision

The Secretary would be authorized to designate up to nine EACH States. Various sections of Part A would be amended to clarify that provisions regarding spell of illness, scope of benefits, and Part A deductible and coinsurance currently applicable to inpatient services provided by hospitals would also apply to inpatient services provided by rural primary care hospitals.

With respect to the authority of the Secretary to designate an additional two States, the Committee anticipates that the Secretary will designate additional States on the basis of applications received in response to the initial solicitation and the evaluation performed by the Department in response to those applications.

The Secretary would be authorized to designate any urban hospital as an EACH hospital and would be authorized to designate hospitals participating in a bi-state rural network as EACH or rural primary care hospitals although the hospital was not located in a state participating in the EACH program.

The requirements for rural primary care hospitals regarding written policies and supervision of those policies would be amended to clarify that rural primary care hospitals must meet similar requirements to those affecting hospitals. Specifically, rural primary care hospitals would be required to develop policies regarding provision of services and to appoint a physician [as defined in section 1861(r)(1)] to supervise the implementation of the policies.

The bill corrects minor drafting errors.

D. QUALIFIED PSYCHOLOGIST SERVICES

(SEC. 204 OF THIS BILL AND SEC. 6113 OF THE 1989 ACT)

Present law

OBRA '89 authorized clinical psychologists to provide qualified psychologists services to Medicare beneficiaries. Current law requires all inpatients to be under the care of a physician, although certain states authorize psychologists to supervise the care of inpatients.

Explanation of provision

The care of inpatients receiving qualified psychologist services could be supervised by a clinical psychologist as well as by a physician in a state in which such supervision is authorized by state law.

E. UNIFORMED SERVICES TREATMENT FACILITIES

(SEC. 205 OF THIS BILL)

Present law

Hospitals owned by, or under contract to, the Federal government, other than Indian Health Service hospitals, are not eligible for reimbursement under Medicare. Uniformed services treatment facilities, although private hospitals, are under contract to the Federal government. The Assistant Secretary of Defense for Health Affairs has been directed to prepare a report on joint military/civilian medical centers.

Explanation of provision

Notwithstanding any other provision of law, the Secretary would be prohibited from recouping any alleged over payments relating to uniformed services treatment facilities located in Boston, Massachusetts; Baltimore, Maryland; and Seattle, Washington (and providers under contract to those facilities). This would continue the eligibility of these hospitals for reimbursement by Medicare for covered services provided to Medicare beneficiaries during the period beginning October 1, 1986 and ending December 31, 1989.

The Secretary would be directed, in cooperation with the Assistant Secretary of Defense for Health Affairs, to evaluate the potential for joint hospital facilities involving the military, the Department of Veterans' Affairs, and private providers, and report to the Committees on Ways and Means, Energy and Commerce, and Finance, by June 1, 1992. The Secretary would be required to evaluate the need for changes in Medicare, Medicaid, and Public Health Service programs needed to facilitate such joint facilities.

F. CLERICAL ERROR PERTAINING TO NURSING HOME REFORM

(SEC. 206 OF THIS BILL, SEC. 4008 OF THE 1990 ACT)

Present law

OBRA '90 included a clerical error in the nursing home reform provisions pertaining to the period for resident assessment.

Explanation of provision

The clerical error pertaining to the period for resident assessment would be corrected.

II. Subtitle B.—Amendments to Medicare Part B

A. PAYMENTS FOR PHYSICIAN SERVICES (SEC. 211 OF THE BILL, SECS. 4101 THROUGH 4118 OF THE 1990 ACT)

1. Overvalued services

Present law

OBRA '90 provided for reductions in so-called unsurveyed procedures. These procedures were specified by exception. That is, if they were not specified in the statute by both name and procedure code number, they were reduced by 6.5 percent. The lists included in the statute included certain codes that had been surveyed and were not overpriced, and included certain inconsistencies between the list of names and procedure code numbers.

Explanation of provision

The names and procedure code lists of the exceptions to the unsurveyed procedure reductions would be corrected.

2. Radiology services

Present law

OBRA '87 established a fee schedule for radiology services based on a relative value scale and a local conversion factor. OBRA '90 reduced the conversion factor to a geographically-adjusted target amount, but not more than 9.5 percent. Conversion factors below the target were not to be changed. As drafted, the statute would allow conversion factors below the target to be increased.

Explanation of provision

The local conversion factors below the target would not be increased, and other technical and conforming changes to the OBRA '90 radiology provision would be made.

3. Anesthesiology services

Present law

OBRA '87 provided for the development and establishment of an anesthesiology fee schedule based on a relative value guide and local conversion factors. OBRA '90 reduced the conversion factor to a geographically-adjusted target amount. Conversion factors below the target were not intended to be changed. As drafted, the statute would allow conversion factors below the target to be increased.

Explanation of provision

The local conversion factors below the target would not be increased, and other technical and conforming changes to the OBRA '90 anesthesiology provision would be made.

4. Assistants at surgery

Present law

OBRA '90 prohibited payments for an assistant at surgery for procedures where an assistant is used in less than 5 percent of cases. The Secretary was required to determine the procedures for which payment for an assistant could not be made based on the most recent data available.

Explanation of provision

Procedures would be categorized by their frequency of use of an assistant using data reflecting separate payments for an assistant under Medicare. The limiting amount of the actual charge for a physician serving as an assistant at surgery would be amended so clarify that it could not exceed 125 percent of the payment for serving as an assistant.

5. Technical components of diagnostic services

Present law

OBRA '90 provided that the fees for the technical components of certain diagnostic tests were capped at the national median of fees for each such test. The statutory language included reductions for services under this provision that were also reduced under other overpriced provisions in OBRA '90.

Explanation of provision

The OBRA '90 provision capping the technical component of the fees of certain diagnostic services would be amended to clarify that the cap would not apply to any services that had their fees reduced under other OBRA '90 provisions.

6. Statewide fee schedules

Present law

OBRA '90 provided that under certain circumstances, the Secretary would be required to provide that physician fees in the States of Oklahoma and Nebraska were to be determined on a Statewide basis. As drafted, this provision could be construed as allowing for a legislative veto. In signing OBRA '90 the President indicated that he believed the provision, as drafted, to be unconstitutional.

Explanation of provision

The Secretary would be required to treat the States of Oklahoma and Nebraska as single areas for the purpose of determining physician fees for services provided on or after January 1, 1992.

7. Reciprocal billing arrangements

Present law

Section 4110 of OBRA '90 provided that a physician could submit a claim for a service provided by a second physician when the first physician was not available to provide the service. This provision is limited to cases in which the arrangement is temporary and reciprocal.

Explanation of provision

Section 4110 of OBRA '90 would be amended to permit such billing practices in the case of arrangements involving per diem or other fee-for-time compensation and to limit all such arrangements to a period not exceeding 60 continuous days.

8. Study of aggregation rule for claims for similar physician services

Present law

Section 4113 provided for a HCFA study of permitting physicians to aggregate similar claims when filing appeals of payment decisions. The report to the Committee on Ways and Means, Committee on Energy and Commerce, and the Senate Finance Committee on the results of this study is due by December 31, 1992.

Explanation of provision

The deadline for submitting the report on the results of this study would be delayed to December 31, 1993.

9. Other technical amendments

Present law

Sections 4104, 4105, 4113, 4114, and 4118 of OBRA '90 provide for the update for physician fees, a study of aggregation of appeals, a study of the release of utilization review screens and other miscellaneous and technical amendments.

Explanation of provision

Technical and conforming changes would be made to sections 4104, 4105, 4113, 4114, and 4118 of OBRA '90 relating to payments to physicians.

B. SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS (SEC. 212 OF THE BILL, SEC. 4151 OF THE 1990 ACT)

1. Payment amounts for services furnished in ambulatory surgical centers

Present law

Under current law, the Secretary is authorized to update the rates for payments to free-standing ambulatory surgical centers (ASCs) when appropriate.

The conferees to OBRA '90 agreed to a provision providing for an annual update for these rates. Statutory language reflecting this agreement was not included in OBRA'90.

Explanation of provision

The Secretary would be required to conduct a survey of the costs of free-standing ASCs based on a representative sample of procedures and facilities. The initial survey would be completed not later than July 1, 1993, and would be conducted at least every 5 years thereafter.

If the Secretary does not update the ASC payment rates by October 1 of each fiscal year, beginning in fiscal year 1994, the rates would be updated by the percentage change in the Consumer Price Index (CPI–U) for the 12-month period ending with March of the preceding fiscal year.

2. Adjustments to payment amounts for new technology intraocular lenses

Present law

OBRA '90 included a provision capping payments for intraocular lenses (IOLs) at $200 in 1991 and 1992. As drafted, the statutory language could be interpreted as limiting payments for cataract surgery to $200.

The conferees to OBRA '90 also agreed to a provision providing for a process through which the fee could be adjusted for certain new technology IOLs. Statutory language reflecting this agreement was not included in OBRA'90.

Explanation of provision

Current law would be amended to clarify that the $200 limit applies only to the purchase of the IOL, and not the cataract surgery.

The Secretary would, within one year of enactment, develop and implement a process for the review of the costs and benefits of "new technology" IOLs. Such process would be intended to determine whether a payment adjustment is warranted for a particular IOL. The review would include consideration of medical benefits of such lenses. Interested parties could request the review of an IOL to determine whether it qualifies for a payment adjustment.

The Secretary would periodically publish a notice of lens for which such a review had been requested. This notice would provide for a 30-day comment period. The Secretary would be required to publish the findings from such reviews within 90 days of the close of the comment period. Any payment adjustment would be effective for services and items provided 30 days after publication of the findings.

C. DURABLE MEDICAL EQUIPMENT (SEC. 213 OF THE BILL, SECS. 4152 AND 4153 OF THE 1990 ACT)

1. Updates to payment amounts

Present law

Current law provides that the fee schedule amounts for durable medical equipment (DME) are updated annually by the CPI–U. The conference agreement to OBRA '90 provided that the update would be reduced by 1 percent for calendar years 1991 and 1992. As drafted, DME fees would be reduced by 1 percent in 1991 and 1992.

Explanation of provision

The update for DME services would be clarified such that these fees would be updated by the CPI–U minus 1 percent in 1991 and 1992.

2. Treatment for potentially overused items and advance determinations of coverage

Present law

The conference agreement to OBRA '90 included two provisions relating to special carrier review of potentially overutilized items and advance determinations of coverage for certain items. These two provisions were combined in drafting such that they do not reflect the conference agreement.

Explanation of provision

Claims for items of DME that are potentially overused would be subject to special carrier scrutiny. The Secretary would publish, and periodically update, a list of such items. The list would include: seatlift mechanism, TENS equipment, power-driven scooters, and such other items of DME determined appropriate by the Secretary. The Secretary would include items that are either: (1) mass marketed directly to beneficiaries; (2) marketed with offers to waive the coinsurance, or marketed as "free" or "at no cost" to beneficiaries with Medigap coverage or other coverage; (3) subject to a consistent pattern of overutilization; or (4) frequently denied based on a lack of medical necessity.

For customized equipment and for equipment designated by the Secretary as requiring a prior written physician's order, suppliers could request prior approval of the item from a carrier in a form determined by the Secretary. The Secretary would establish standards for the timeliness of carrier responses to such requests, and would incorporate such standards into the evaluations of carriers' performance.

3. Study of variations in DME supplier costs

Present law

OBRA '90 provided for a system of upper and lower limits on DME fees. The OBRA '90 conference agreement also includes a study of geographic variations in the cost of providing services by suppliers. This provision was not included in the statutory language.

Explanation of provision

The Health Care Financing Administration (HCFA) would collect and analyze DME cost data to isolate the proportion of suppliers' costs that are related to the "service" and "product" components of providing different types of DME items and services. In conducting this study, HCFA would consult with appropriate organizations.

HCFA would analyze the geographic variations in the cost of the service component. HCFA would develop an index that reflects geographic variations in suppliers' costs of providing the service component.

HCFA would submit a report on its findings, including recommendations regarding the use of area adjustments for DME items and services, to the Ways and Means, Energy and Commerce and Senate Finance Committees. The report, due on January 1, 1993, would include an impact analysis of the use of the index on suppliers.

4. Oxygen retesting

Present law

OBRA '90 requires that patients receiving oxygen therapy who have an initial arterial blood gas value at or above a partial pressure of 55 could not receive more than 90 days of therapy unless the patient is retested to demonstrate the continued need for such therapy. Current carrier practices had used a value of 56 for determining the need for continued treatment.

Explanation of provision

The threshold for determining whether a patient needed to be retested would be changed from 55 to 56, to be consistent with current carrier review practice.

5. Orthotic and prosthetic fee schedules

Present law

Section 4153 of OBRA '90 provided for the establishment of regional fee schedules for orthotic and prosthetic items. These regional fee schedules are phased in. The first phase of the transition to regional fees applies to items and services provided on or after January 1, 1992. As drafted, the second and third steps in the transition are made on January 1 of 1993 and 1994.

Explanation of provision

The transition to regional fees would be delayed by one year.

6. Other technical and conforming amendments

Present law

Sections 4152 and 4153 of OBRA '90, as drafted, includes several minor and technical drafting errors.

Explanation of provision

Certain technical and conforming changes would be made to sections 4152 and 4153 of OBRA '90.

D. OTHER PART B ITEMS AND SERVICES (SEC. 214 OF THE BILL, SECS. 4154 THROUGH 4164 OF THE 1990 ACT)

1. Revise information on Part B claim form

Present law

Each Part B claim for which the entity submitting the claim knows or has reason to believe there has been a referral by a referring physician must include the name and provider number of the referring physician and indicate whether the referring physician is an investor in the entity.

Explanation of provision

The Part B claim form would be required to include the unique physician identification number, and the requirement that the claim indicate whether the referring physician is an investor in the entity submitting the claim would be deleted.

2. Consultation for social workers

Present law

OBRA '89 provided for coverage of the services of psychologists and clinical social workers. The Secretary of Health and Human Services was required to develop criteria with respect to psychologists' services under which the psychologist must agree to consult with the patient's attending physician. This requirement was not included for clinical social workers.

Explanation of provision

Clinical social workers would be required to consult with a patient's attending physician in the same manner as psychologists.

3. Reports on outpatient hospital payment

Present law

OBRA '90 requires the Secretary and the Prospective Payment Assessment Commission (ProPAC) to report on hospital outpatient payment by September 1, 1991, and March 1, 1992, respectively. Section 6137 of OBRA '89 and section 1135(d)(6) also require reports from the Secretary and ProPAC on this subject.

Explanation of provision

The reports mandated by section 6137 of OBRA '89 and section 1135 of the Social Security Act would be repealed.

4. Limits on radiology and diagnostic services provided in hospital outpatient departments

Present law

Current law provides for limits on the reasonable costs recognized for payments to hospital outpatient departments based on the prevailing charges for radiology and diagnostic services. OBRA '89 provides that, after January 1, 1992, these services would be paid under the resource based relative value scale.

Explanation of provision

The specification of the limits would be clarified to be based on payments under the resource based relative value scale.

5. Payments to nurses in rural areas

Present law

OBRA '90 provided for payments for the services of nurse practitioners and clinical nurse specialists provided in rural areas. While current law excludes the services of physician assistants, nurse midwives, certified registered nurse anesthetists, and psychologists from the definition of inpatient hospital services, payments for nurse practitioners and clinical nurse specialists were not included in this exception.

Explanation of provision

Services of nurse practitioners and clinical nurse specialists in rural areas would be excluded from the definition of inpatient hospital services.

6. Other technical and conforming amendments

Present law

(a) *Beneficiary Enrollment.*—Elderly or disabled employees and their spouses who are covered by employer health plans are not required to enroll in the same enrollment period applicable to others. However, they are unable to enroll while enrolled in an employer group health plan. Coverage for such individuals begins generally on the first day of the month in which the individual is no longer enrolled in an employer group health plan.

A modifying provision was agreed to by the conferees but was not included in the statutory language of OBRA '90.

(b) *Other Minor Technical and Conforming Amendments.*—Sections 4154 through 4164 of OBRA '90 include a number of minor and technical drafting errors.

EXPLANATION OF PROVISION

(a) *Beneficiary Enrollment.*—The special enrollment period would be modified to allow individuals who have employer group health coverage to enroll in Part B at any time that they are enrolled in the group health plan, rather than after they leave the plan.

If an individual enrolled in Part B while enrolled in the group health plan or in the first month after leaving the plan, Medicare coverage would begin on the first day of the month in which the individual enrolled (or, at the option of the individual, on the first day of any of the following three months). These provisions would be effective on the first day of the first month beginning more than 120 days after the date of enactment of this Act.

(b) *Other Minor Technical and Conforming Amendments.*—Various technical and conforming amendments would be made.

III. SUBTITLE C.—AMENDMENTS TO MEDICARE PARTS A AND B

A. PROVISIONS RELATING TO PARTS A AND B (SEC. 221 OF THE BILL, SECS. 4201–4207 OF OBRA '90)

1. End stage renal disease

Present law

OBRA '90 requires the Prospective Payment Assessment Commission to conduct a study of the costs, services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients. The study also requires ProPAC to make annual recommendations on payments for services.

Explanation of provision

The effective date for ProPAC's initial recommendations would be delayed to not later than June 1, 1992. The bill would also correct a number of technical and clerical drafting errors.

2. Home dialysis demonstration project

Present law

The staff-assisted home dialysis demonstration project included in OBRA '90 established a per treatment payment amount for staff assistants. Currently, a wage adjuster is applied twice in the payment formula. The unintended effect is a payment that is lower in high cost areas and higher in low cost areas.

In addition, the demonstration included several minor and technical drafting errors.

Explanation of provision

The second and redundant wage adjustment would be eliminated. This would have the effect of increasing payment in high cost areas and reducing payments in low cost areas.

In addition, a number of minor and technical drafting errors would be corrected.

3. Secondary payer provisions

Present law

The Medicare secondary payer provisions include a number of minor and technical drafting errors.

(a) *Application of secondary payer provisions to governmental entities.*—OBRA 1986 required that Medicare be the secondary payer for disabled Medicare beneficiaries who are covered by a large group health plan for items and services furnished on or after January 1, 1987 and before January 1, 1992. OBRA '90 extended the provision to items and services furnished before October 1, 1995.

The 1986 disability provision could have been interpreted as excusing governmental entities from the requirements since these entities were not subject to the penalty for non-compliance. Section 4034 of OBRA '87 clarified that governmental entities are subject to the secondary payer provisions. However, when OBRA '89 amended the secondary payer provisions, the OBRA '87 clarification was not incorporated. As a result, it is not clear that all of the secondary payer requirements pertaining to the aged, disabled and ESRD beneficiaries apply to governmental entities.

(b) *Clarification of exemption for employers with less than 20 employees.*—An employer that is not part of a multi-employer plan is subject to the Medicare secondary payer provisions if it had 20 or more employees in either the current or the preceding calendar year. In order to be exempt from the provisions, such an employer must have less than 20 employees in both the current and preceding calendar years.

However, a small employer that is part of a multi-employer plan can elect to be exempt from the Medicare secondary payer provisions if it had less than 20 employees in either the current calendar year or the preceding calendar year. This provision is inconsistent with the exemption applied to employers that are not part of a multi-employer plan.

(c) *Medicare as secondary payer for individuals with end stage renal disease.*—Employer-based health insurance is primary for end stage renal disease beneficiaries for an 18-month period. A group health plan may not differentiate in the benefits it provides between individuals having end stage renal disease and other individuals covered under the plan on the basis of the existence of the disease or the need for renal dialysis services, or in any other manner. This non-differentiation requirement does not prohibit a plan from paying secondary benefits after the 18-month coordination period.

Explanation of provision

A number of minor and technical drafting errors in OBRA '90 would be corrected.

(a) *Application of secondary payer provisions to governmental entities.*—This provision would clarify that governmental entities are subject to the Medicare secondary payer provisions, although they would not be subject to the penalty for nonconforming group health plans.

(b) *Clarification of exemption for employers with less than 20 employees.*—The provision would clarify that employers in multi-group health plans are treated the same way as other small employers for purposes of Medicare secondary payer.

(c) *Medicare as secondary payer for individuals with end stage renal disease.*—This provision would clarify that the non-differentiation requirement does not prohibit a plan from paying benefits secondary to Medicare after the 18-month coordination period, by striking the phrase "taking into account that" and replacing it with "paying benefits secondary to Medicare when" in Section 1882(b)(1)(C).

4. *Health maintenance organizations*

Present law

OBRA '90 required the Secretary of DHHS to submit a proposal to the Congress by January 1, 1992 providing for a more accurate payment method for HMOs paid on a risk basis. The Secretary is required to publish a notice of proposed rule making in the Federal Register by March 1, 1992 and the Comptroller General is required to review and report to the Congress by May 1, 1992 on recommendations to modify the proposed methodology.

A number of minor and technical drafting errors were made in the HMO section of OBRA '90.

Explanation of provision

The Secretary would be required to revise the payment methodology for HMOs for contracts for years beginning with 1993. In making revisions, the Secretary would be required to consider: (i) the difference in costs associated with beneficiaries with differing health status and demographic characteristics; (ii) the effects of using alternative geographic classifications; and (iii) the difference in costs associated with beneficiaries for whom Medicare is the secondary payer. The Secretary would be required to publish a proposed rule before March 1, 1992 and the Comptroller General would be required to review and report to the Congress by May 1, 1992 on the appropriateness of the proposed rule. Before August 31, 1992 the Secretary would be required to publish a final rule effective for contract years beginning on or after January 1, 1993.

A number of minor and technical drafting errors in the HMO section would be corrected.

5. *Peer review organizations*

Present law

OBRA '90 provided that Peer Review Organizations (PROs) are required to provide notice to State licensing entities when a physician is found to have furnished services in violation of subsection 1154(a) of the Social Security Act. This subsection includes the requirements that PROs review the quality of medical care and determine whether certain services are covered under Medicare. As drafted, the provision in OBRA '90 would require the PROs to notify State boards in the case of a variety of administrative findings, as well as in the case of a problem regarding quality of care.

Explanation of provision

PROs would not be required to give notice to State licensing boards regarding administrative issues. PROs would continue to give notice to State licensing boards for care that is unnecessary or fails to meet accepted standards for quality. In addition, various drafting errors in the OBRA '90 provisions relating to PROs would be corrected.

6. Survey and certification requirements

Present law

The Secretary is prohibited from imposing user fees on facilities for determining compliance with any requirement of Medicare. The current statutory language could be misinterpreted to mean that user fees imposed by the Clinical Laboratory Improvement Amendments are prohibited. Minor drafting errors exist in the survey and certification provisions.

Explanation of provision

The ban on user fees for survey and certification would be amended to clarify that user fees imposed by the Clinical Laboratory Improvement Amendments of 1988 are not to be included under the general ban on user fees. The drafting errors would be corrected.

7. Other miscellaneous and technical provisions

Present law

A number of minor and technical drafting errors require correction.

Explanation of provision

Various technical and conforming amendments would be made to the Part A and B provisions of OBRA '90. In addition, minor drafting errors in section 1877 of the Social Security Act, including errors in the definitions relating to the terms "compensation" and "diagnostic imaging services," would be corrected.

IV. SUBTITLE D—AMENDMENTS TO MEDIGAP STANDARDS

A. MEDICARE SUPPLEMENTAL INSURANCE POLICIES (SEC. 231 OF THE BILL, SECS. 4351–4361 OF THE 1990 ACT)

OBRA '90 provides minimum standards for Medicare Supplemental Insurance policies and establishes penalties for non-compliance.

1. Simplification of Medicare supplemental policies

Present law

This subsection includes a number of minor and technical drafting errors. In addition, the Conference Report to accompany OBRA '90 states that the Conferees intend that the National Association of Insurance Commissioners, in promulgating changes in the Model Medigap Regulations to conform with Federal requirments, would delete from Section 12(C) all that follows "unless" with respect to limitations on certain sales commissions. This language has not been deleted from the revised NAIC 1991 Model Regulations.

Explanation of provision

The bill corrects a number of minor and technical drafting errors in OBRA '90. In addition, this provision would make necessary modifications to conform with Congressional intent regarding a deletion of an exception from Section 15C (formerly Section 12C) from the 1991 NAIC Model Regulations pertaining to agent compensation.

2. Preventing duplication

Present law

OBRA '90 strengthens the prohibitions against the sale of duplicate coverage to Medicare beneficiaries. In general, the provisions included in OBRA '90: (i) state that it is unlawful for a person to sell or issue a health insurance policy to an individual entitled to benefits under Medicare, with knowledge that such policy duplicates health benefits to which such individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law, other than Medicare or Medicaid; (ii) prohibit the sale of a Medigap policy to a Medicaid beneficiary; and (iii) strengthen the enforcement provisions that were already in statute. Insurers are required to ask applicants certain questions about their existing coverage to determine if coverage under a new Medigap policy would be duplicative, other than duplication of benefits covered under Medicare or Medicaid.

In addition to prohibiting the sale of a Medigap policy to an individual already entitled to benefits under a Medigap policy, OBRA '90 appears to have the effect of prohibiting the sale of Medigap insurance to beneficiaries who may have other coverage, such as coverage under an employer group health plan, coverage under a long-term care policy or coverage under a variety of other health insurance policies, including hospital indemnity and dread disease policies. The statute also prohibits the sale of duplicative health insurance policies, including long-term care and indemnity products, if such policies duplicate health benefits to which the individual is entitled, other than benefits to which the individual is entitled under a requirement of Federal or State law, other than under Medicare or Medicaid.

Explanation of provision

This provision continues the current law prohibition on the sale of duplicative health insurance policies, including long-term care and indemnity products, subject to the conditions described in the following paragraph. Under this provision, it would be unlawful to sell or issue to an individual entitled to benefits under Part A or enrolled under Part B: a health insurance policy with knowledge that such policy duplicates health benefits to which such individual is otherwise entitled under Medicare or Medicaid; a Medicare Supplemental policy with knowledge that the individual is entitled to benefits under another Medicare Supplemental policy; or a health insurance policy, other than a Medicare Supplemental Insurance Policy, with knowledge that such policy duplicates health benefits to which the individual is otherwise entitled under a requirement of State or Federal law.

Penalties would not apply, however, to the sale or issuance of a policy or plan that duplicates health benefits under Medicare or Medicaid or a policy or plan that duplicates health benefits to which the individual is otherwise entitled if under the policy or plan all benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual. An additional condition must be met to waive the penalty in the case of the sale or issuance of a policy or plan that duplicates benefits under Medicare or Medicaid, that the application would include a statement, prominently displayed, disclosing the extent to which benefits payable under the policy or plan duplicate Medicare benefits. These provisions would expire December 31, 1993. The new provisions pertaining to non-duplication would not alter in any way the current law prohibition on the sale of a Medicare Supplemental Insurance policy to a Medicaid beneficiary.

The Comptroller General of the United States General Accounting Office would conduct a study of health insurance policies available to the elderly. The study would assess the potential for duplicative coverage between such policies and with benefits covered under the Medicare program. It would also examine the potential for overlap between such health insurance policies and employer-provided health benefits. The Comptroller General would report to the Committee on Ways and Means and the Committee on Energy and Commerce of the U.S. House of Representatives and the Senate Committee on Finance by December 15, 1992.

3. Loss ratios and refunds of premiums

Present law

Certified Medigap policies may not be issued or sold unless the policy can be expected to return to policyholders, in the form of aggregate benefits, at least 75 percent of premiums for group policies and at least 65 percent for individual policies. Non-compliant companies that fail to issue rebates or credits would be subject to civil money penalties. The loss ratio provisions of OBRA '90 include a number of minor and technical drafting errors. The OBRA '90 statutory language does not reflect the agreement of the Conferees to apply the new 65 percent loss ratio requirement to existing policies.

Explanation of provision

The provision would correct a number of minor and technical drafting errors on OBRA '90 concerning loss ratio requirements.

This provision would clarify that loss ratio requirements would apply to policies issued or renewed on or after the effective date of the OBRA '90 loss ratio requirements. For purposes of calculating the refund or credit required for a policy issued prior to the effective date, the refund or credit would be based upon the aggregate benefits provided under all policies issued by an insurer in a state to generate credible numbers for the refund calculation. The refund or credit would be based only on aggregate benefits provided under the policies after the effective date of the standards.

This provision would further clarify that, for policies issued after the effective date, loss ratio provisions would be applied with respect to each standard benefit package.

4. Pre-existing condition limitations

Present law

OBRA '90 prohibits medical underwriting and certain other practices for a six month period beginning with the first month in which the individual who is 65 years of age or older first is enrolled for Part B benefits.

Explanation of provision

This provision would clarify Congressional intent that, irrespective of when the policy is issued or when the application is submitted prior to the applicable six month period, if the policy becomes effective during the 6-month period beginning with the first month in which the individual (who is 65 years of age or older) first is enrolled for benefits under Part B, the individual would be offered the open enrollment period.

5. Other miscellaneous and technical provisions

Present law

The provisions of OBRA '90 included a number of minor and technical drafting errors.

Explanation of provisions

The effective dates for various provisions would be modified. In general, effective dates would conform with the earlier of the date the State adopts standards included in OBRA '90 or one year after the National Association of Insurance Commissioners adopts the standards included in OBRA '90. It would also make minor, technical and conforming amendments.

TITLE III. TECHNICAL CORRECTIONS RELATED TO SOCIAL SECURITY, HUMAN RESOURCES AND TRADE

I. Social Security Provisions

A. SECURITY BENEFITS FOR DISABLED WIDOWS (SEC. 301(A) OF THE BILL, SEC. 5103 OF THE 1990 ACT, AND 42 U.S.C. 423(F)(2))

Present law

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) changed the definition of disability for disabled widows to the same definition that applies to disabled workers.

Explanation of provision

The provision would correct two references to the previous standard for disabled widows which are now obsolete and which were inadvertently left unchanged by OBRA 1990.

B. REPRESENTATIVE PAYEE REFORM (SEC. 301(B) OF THE BILL AND SEC. 5105 OF THE 1990 ACT)

Present law

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) improved the representative payee system by requiring stricter standards to be used by the Social Security Administration in determining the fitness of the representative payee applicant to manage benefit payments on behalf of the beneficiary.

Explanation of provision

The provision would amend section 5105(d)(1) of the Omnibus Budget Reconciliation Act to redesignate paragraphs in section 205(j) of the Social Security Act.

C. COORDINATION OF RULES RELATING TO FEES FOR REPRESENTATIVES OF CLAIMANTS WITH ENTITLEMENTS UNDER BOTH TITLE II AND TITLE XVI (301(C) OF THE BILL, SEC. 5106 OF THE 1990 ACT, 42 U.S.C. 406(B)(1) AND 42 U.S.C. 1383(D)(2)(A)(I))

Present law

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) established a new streamlined procedure for the approval of fees for representatives of claimants for title II (social security) and title XVI (Supplemental Security Income or SSI) benefits. In general, it permitted claimants' representatives to collect a fee of 25 percent of the total past-due benefits, not to exceed $4,000. If a claimant is concurrently entitled to past-due benefits under both titles, a windfall offset reduction is applied to whichever benefit is paid second. That is, benefits paid under one title are reduced to account for overlapping benefits previously paid under the other title.

Explanation of provision

The provision would clarify that, in concurrent title II/title XVI cases in which the windfall offset applies, a fee could not be approved under the streamlined procedures which is in excess of 25 percent of the combined benefits payable after application of the windfall offset, and such a fee could not exceed $4,000.

The provision would take effect as if it had been included in the Omnibus Budget Reconciliation Act of 1990.

D. ELIMINATION OF ADVANCED TAX TRANSFERS (301(D) OF THE BILL, SEC. 5115 OF THE 1990 ACT, AND 42 U.S.C. 401(A))

Present law

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) eliminated the practice of crediting to the social security trust funds, at the start of each month, the full amount of social security tax receipts which were expected to be collected throughout the month. The trust funds are now credited with the receipts as they are collected throughout each month.

Explanation of provision

The provision would amend section 5115 of the Omnibus Budget Reconciliation Act of 1990 to amend the last sentence of section 201(a) of the Social Security Act by eliminating the second "and" where it appears as a duplication.

II. Income Security and Human Resources Provisions

A. CHILDREN'S COMMISSION REPORTING DATE (SEC. 311 OF THE BILL, SEC. 4207 (K) (6) AND SEC. 5057 OF THE 1990 ACT)

Present law

Under section 1139(d) of the Social Security Act, as amended by the Omnibus Reconciliation Act of 1989, the National Commission on Children is directed to study and recommend to the President and the Congress ways to improve the well-being of children. The Omnibus Reconciliation Act of 1990 included two separate amendments to section 1139(d) that were intended to clarify the interim and final reporting dates for the Commission. As enacted, however, the two amendments differ with respect to the reporting date for the interim report.

Explanation of provision

The provision clarifies that the interim reporting date for the Commission is March 31, 1990.

The provision would take effect on the date of enactment.

B. OTHER INCOME SECURITY AND HUMAN RESOURCES PROVISIONS (SECS. 312 AND 313 OF THE BILL)

Present law

The Omnibus Budget Reconciliation Acts of 1989 and 1990 included a number of provisions amending the Supplemental Security Income (SSI) and Aid to Families with Dependent Children (AFDC) programs.

Explanation of provisions

The provisions would make several technical and conforming amendments related to the SSI and AFDC provisions enacted under OBRA 1989 and OBRA 1990, including amendments that redesignate sections of law so that they are appropriately designated and amendments that correct cross references. In addition, the amendments delete a clause in Title XVI of the Social Security Act dealing with representative payee recordkeeping and auditing requirements for parents and spouses that was deleted in Title II of the Social Security Act by section 5105(b)(1)(A)(i) of OBRA 1990, but left inadvertently in Title XVI.

III. Tariff and Customs Provisions

A. REMOVAL OF GDR FROM COLUMN 2 RATE LIST (SEC. 321 (A) (1) OF THE BILL, AND GENERAL NOTE 3 (B) TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES)

Present law

General Note 3(b) to the Harmonized Tariff Schedule of the United States (HTS) lists "German Democratic Republic" among the list of countries subject to column 2 rates of duty.

Explanation of provision

Upon German reunification last year, most-favored-nation (MFN) column 1 treatment already granted to West Germany was extended automatically to the former East Germany on October 31, 1990. The bill recognizes the reunification of Germany and its MFN status by eliminating reference to the German Democratic Republic from the HTS.

B. TAPESTRY AND UPHOLSTERY FABRICS (SEC. 321(A)(2) OF THE BILL; SEC. 472(B) OF THE CUSTOMS AND TRADE ACT OF 1990; PART II, SEC. 10011(A) OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990; AND SUBHEADING 5112.19.20 TO THE HTS)

Present law

The Customs and Trade Act of 1990 (P.L. 101-382, hereafter referred to as "the Trade Act"), added several new HTS subheadings to heading 5111 and 5112 for tapestry fabrics and upholstery fabrics of a weight exceeding 300 grams per square meter. This reduced the tariff rate from 36.1 percent ad valorem to 7 percent ad valorem for these fabrics.

New HTS subheading 5112.19.10 was renumbered as 5112.19.20 in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508, hereafter referred to as "the Budget Reconciliation Act").

Explanation of provision

Adding the words "of a weight exceeding 300 g/m^2" to HTS subheading 5112.19.20 inadvertently raised the column 1 duty rate on certain tapestry and upholstery fabrics. Deleting these words restores prior HTS treatment.

The change applies retroactively to allow importers to apply for reassessment of duties levied since October 1, 1990 using the higher rate.

C. GLOVES (SEC. 321(A)(3) OF THE BILL; PART II, SEC. 10011, (A), (B)(2), AND (B)(6) OF THE BUDGET RECONCILIATION ACT; AND CHAPTER 61 AND 62 TO THE HTS)

Present law

In the Budget Reconciliation Act, the HTS subheading 6216.00.47 was deleted; 6216.00.49 was redesignated as 6216.00.52 and it was indented so that it aligned with 6216.00.46 (which had been redesignated from 6216.00.44). Inadvertently the superior text "Other", placed just above deleted 6216.00.47, was not stricken.

The Budget Reconciliation Act redesignated 6116.10.25 as 6116.10.45.

Explanation of provision

The word "Other", inadvertently kept above the deleted 6210.00.47, is stricken.

New HTS subheading 6116.10.45 is redesignated as 6116.10.48 to avoid reusing a previously used subheading number.

D. AGGLOMERATE STONE FLOOR AND WALL TILES (SEC. 321(A)(4) OF THE BILL, SEC. 484B AND 485(B) OF THE TRADE ACT, AND SUBHEADING 6810.19.12 TO THE HTS)

Present law

The Trade Act added a new HTS subheading (6810.19.12) for agglomerate marble floor tiles. This reduced the tariff rate from 21 percent ad valorem to 4.9 percent ad valorem for these types of tiles.

The provision as written only applies to geological marble and not to other types of material which may be commonly referred to as "marble" but are not recognized as such by the Explanatory Notes to the HTS.

Explanation of provision

The description for HTS subheading 6810.19.12 is changed from "agglomerate marble tiles" to "floor and wall tiles of stone agglomerated with binders other than cement." The rewording covers tiles produced from chips or dust of various natural stones mixed with a plastic resin binding material.

The change applies retroactively to allow importers to apply for reassessment of duties levied since January 1, 1989 using the higher rate.

E. 2,4-DIAMINOBENZESULFONIC ACID (SEC. 321(A)(5) OF THE BILL, SEC. 349 OF THE TRADE ACT, AND SUBHEADING 9902.30.43 TO THE HTS)

Present law

Under HTS 9902.30.43, which grants a duty suspension to 2,4-Diaminobenzesulfonic acid, "2921.51.50" is cited as the HTS subheading that imports of this chemical enter under.

Explanation of provision

The correct HTS subheading that imports of 2,4-Diaminobenzenesulfonic acid enter under, "2921.59.50", is now cited.

F. MACHINES USED IN THE MANUFACTURE OF BICYCLE PARTS (SEC. 321(A)(6) OF THE BILL, SEC. 439 OF THE TRADE ACT, AND SUBHEADING 9902.84.79 TO THE HTS)

Present law

The Trade Act suspended the duty on machines used to manufacture bicycle wheels by adding a new HTS subheading, 9902.84.79. The machines covered include "wheeltruing" and "rim punching" machines. Subheading 9902.84.79 refers only to HTS subheading 8479.89.90 which covers "machines and mechanical appliances."

Explanation of provision

Wheeltruing machines are covered by HTS subheading 9031.80.00 and rim punching machines are covered by HTS subheading 8462.49.00. These two additional subheadings are now referenced in subheading 9902.84.79.

The change applies retroactively to allow importers to apply for reassessment of duties levied since October 1, 1990.

G. COPYING MACHINES AND PARTS (SEC. 321(A)(7) OF THE BILL, SEC. 462(D)(2) OF THE TRADE ACT, AND SUBHEADING 9902.90.90 TO THE HTS)

Present law

HTS subheading 9902.90.90 provides duty-free treatment for parts and accessories of electrostatic copying machines. The Trade Act amended 9902.90.90 to cover parts and accessories intended for attachment to electrostatic copiers. Subheading 9902.90.90 refers to subheading 8472.90.80 as the provision that covers parts and accessories for attachment to electrostatic copiers.

Explanation of provision

Parts intended for attachment to electronic copiers are covered by HTS subheading 8473.40.40. This additional subheading is now referenced in subheading 9902.90.90.

The change applies retroactively to allow importers to apply for reassessment of duties levied since January 1, 1989 using the higher rate.

H. CLARIFICATION REGARDING THE APPLICATION OF CUSTOMS USER FEES (SEC. 322 OF THE BILL; TITLE I, SUBTITLE B, SEC. 111(B)(2)(D)(V) OF THE TRADE ACT; SUBPARAGRAPH (D) OF SEC. 13031(B)(8) OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985; AND 19 U.S.C. 58C(B)(8)(D))

Present law

An amendment to the Customs User Fee statute as enacted in the Trade Act exempted the domestic value of agricultural products processed and packed in a foreign trade zone from the application of the ad valorem merchandise processing fee (MPF). The Customs Service has interpreted this provision by ruling that, in the absence of an express provision to the contrary, the MPF would be assessed on the domestic value of all other merchandise (i.e., non-agricultural) processed or packed in a foreign trade zone.

Explanation of provision

This technical amendment applies the MPF only to the foreign value of imported merchandise entered from a foreign trade zone, thereby clarifying that the user fee cannot be assessed against the value of domestic content of an entry. The amendment applies to all unliquidated entries from foreign trade zones beginning December 1, 1986.

I. TECHNICAL AMENDMENTS TO THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988 (SEC. 323 OF THE BILL, SEC. 1102(A) OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, AND 19 U.S.C. 2902(A))

Present law

Section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902) (hereafter referred to as "the 1988 Act") provides the President the authority to proclaim certain tariff reductions pursuant to trade agreements with foreign countries. Paragraph (a)(2) provides the President the authority to reduce tariff rates in existence as of August 23, 1988, at which time the Tariff Schedules of the United States (TSUS) were in effect. Pursuant to Title I, Subtitle B of the 1988 Act, the TSUS were replaced by the HTS effective January 1, 1989. Tariff negotiations in the Uruguay Round of Multilateral Trade Negotiations have been conducted on the basis of U.S. tariff rates under the HTS rather than under the TSUS.

Explanation of provision

The correction amends the 1988 Act to reflect the fact that any tariff reductions that might be proclaimed by the President pursuant to Section 1102(a) of the 1988 Act will be based upon the tariff rates under the HTS rather than under the TSUS.

J. TECHNICAL AMENDMENT TO THE CUSTOMS AND TRADE ACT OF 1990 (SEC. 324 OF THE BILL, SEC. 484H(B) OF THE TRADE ACT, AND 19 U.S.C. 1553 NOTE)

Present law

The Trade Act provides for transportation in bond of Canadian lottery material.

Explanation of provision

The phrase "entered or withdrawn from warehouse for consumption" had been replaced in the "Effective Date" section with "entered for transportation in bond". This had been done to clarify that Canadian lottery material is not entered into the U.S. for consumption.

III. Effect of the Bill on the Budget

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of the bill, H.R. 1555 as amended. The committee estimates that the provisions contained in bill, H.R. 1555, as amended, will not have any overall revenue impact.

IV. Vote of the Committee and Other Matters To Be Discussed Under House Rules

A. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill, H.R. 1555, as amended. The bill, as amended, was ordered favorably reported by voice vote.

B. OTHER MATTERS

In compliance with clause 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 1555, as amended.

Oversight findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee review of necessary technical corrections to the Revenue Reconciliation Act of 1990 and other recently enacted legislation that the committee concluded that it is appropriate to enact the provisions contained in the bill.

The committee met in executive session on November 25, 1990 and ordered the bill as amended favorably reported on November 25, 1990. Hearings on the bill were held on July 23 and 24, 1990. The committee received written comments on H.R. 1555, the Technical Corrections Act of 1991, pursuant to an invitation by the committee to the public.

Tax expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill as reported involve no new or increased tax expenditures.

Budget authority

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made by the bill as reported involve no new budget authority.

Congressional Budget Office estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in Part III of this report) and submitted the following statement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 25, 1991.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has reviewed H.R. 1555, the Technical Corrections Act of 1991, as ordered reported by the House Committee on Ways and Means on November 25, 1991. We estimate that no cost to the federal government would result from enactment of this bill. Enactment of H.R. 1555 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

H.R. 1555 would make technical corrections relating to the Omnibus Reconciliation Act of 1990 in the areas of Revenue Provisions, Medicare, Social Security, Human Resources, and Trade. CBO has reviewed the spending provisions and believe that there are no direct spending implications associated with this legislation. The Joint Committee on Taxation has reviewed the revenue provisions of this bill and has determined that enactment of H.R. 1555 would not affect revenues.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, DIRECTOR.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject of the bill as reported.

Inflationary impact

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is not expected to have an overall inflationary impact on prices and costs in the operation of the national economy.

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